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United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Basis of Claims and Background Information on Asylum-seekers and Refugees from the Russian Federation

United Nations High Commissioner for Refugees (UNHCR)
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List of Acronyms

AI – Amnesty International

CCPR – Committee on civil and political rights

CERD – Committee on the Elimination of all Forms of Racial Discrimination

CIS – Commonwealth of Independent States

CPRF – Communist Party of the Russian Federation

EIU – Economist Intelligence Unit

EU – European Union

FDPs – Formerly Deported Peoples

FSB – Federal Security Service

FSU – Former Soviet Union

GDP – Gross Domestic Product

IDP – Internally Displaced Person

IOM – International Organization for Migration

IRP – Involuntary Relocating Person

MOI – Ministry of Interior

NATO – North Atlantic Treaty Organization

NGO – Non-governmental organization

ODIHR – Office for Democratic Institutions and Human Rights

OSCE – Organization for Security and Cooperation in Europe

VGRTK – Russian Television and Radio Broadcasting Network

I. INTRODUCTION[1]

1. Based on official statistics made available to UNHCR by asylum countries, in 2003 the largest number of asylum-seekers came from the Russian Federation. Some 33,400 asylum applications were submitted in 2003 by asylum-seekers from the Russian Federation in 29 of the most industrialized countries in the world. This number represents an increase of 68% worldwide from 2002, and for Europe alone, an increase of 73%.

2. This trend has generated numerous queries addressed to UNHCR by asylum countries assembling information relevant to the determination of the status of asylum-seekers originating from the Russian Federation. UNHCR Geneva has been requested to assist in this latter regard. This paper is a response to the queries. With the exception of its involvement with displaced persons from Chechnya, UNHCR in the Russian Federation works largely with non-Russian asylum-seekers coming to Russia. UNHCR Geneva has prepared this background paper for general information and on asylum claims lodged for the analysis of relevant legal considerations. Neither can be considered an exhaustive analysis.

II. MAIN ASYLUM CLAIMS BY GROUPS (EXCEPT THOSE OF CHECHENS)[2]

3. Claims lodged by asylum seekers from the Russian Federation fall generally into the following categories: those of asylum-seekers who base their claim on the fact that they are draft evaders or deserters (especially in the context of the armed conflict in Chechnya and the recently adopted federal Law on Alternative Civilian Service); claims by journalists, media workers and human rights defenders for having openly criticized the authorities; claims from political opponents whose political ambitions are allegedly perceived as a threat by the authorities; ethnic and religious minorities; those fleeing non-state actors, in particular organized crime, gender-based claims; and unaccompanied minors.

4. See the Annexes of this paper for a compilation of publicly available background material relating variously to the situations of above-mentioned claims.

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[1] This paper supersedes the "UNHCR CDR Background Paper on Refugees and Asylum Seekers from the Russian Federation", November 2000. It should be viewed in conjunction with the "UNHCR Paper on Asylum-seekers from the Russian Federation in the Context of the Situation in Chechnya", February 2003. That document provides specific information concerning the general situation and recent developments in Chechnya and, more importantly, the question of internal relocation, the federal policy regarding Internally Displaced Persons (IDP), and the identification of categories of persons who may be in need of international protection. All UNHCR positions and guidelines referred to in this document may be found in the Refworld CD Rom set or Refworld on-line www.unhcr.ch/refworld.

[2] Asylum claims submitted by asylum-seekers from Chechnya are not, as such, covered under this paper. UNHCR's position on refugees from the Chechen Republic is elucidated in the February 2003 UNHCR "Paper on the Situation of Asylum-Seekers from the Russian Federation in the context of the situation in Chechnya".

III. SOME RELEVANT LEGAL CONSIDERATIONS[3]

5. UNHCR consistently recommends that all asylum-seekers, regardless of their origin, be given access to individual refugee status determination procedures, where available.

6. This section sets out legal considerations bearing upon the above groupings of claimants from the Russian Federation. UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, ("Handbook")[4] is an important source of guidance in this regard.

A. Draft Evaders and Deserters

7. Claims allege various abuses against military servicemen.

8. Punishment for refusal to perform military service may constitute persecution under certain circumstances.[5] Chief among these are the following:

> (a) If, owing to a Convention reason, the **punishment is applied in a discriminatory manner**. For instance, if sanctions for draft evasion/desertion are only applied in a country to persons of a certain ethnic background, political opinion or religious belief;
>
> (b) If the **punishment for draft evasion/desertion is aggravated** owing to a Convention reason. This would be the case if, for example, the sanction generally applied is 6 months' imprisonment, but persons of a certain race, religion, or political opinion are sentenced to two years;

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[3] According to Article 1(A)(2) of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, the term "refugee" shall apply to any person who:

> ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

[4] Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, UN doc. HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992.

[5] See also paragraph 167 of the Handbook:

> [i]n countries where military service is compulsory, failure to perform this duty is frequently punishable by law. Moreover, whether military service is compulsory or not, desertion is invariably considered a criminal offence. The Penalties may vary from country to country, and are not normally regarded as persecution. Fear of prosecution and punishment for desertion or draft-evasion does not in itself constitute well-founded fear of persecution under the definition. Desertion or draft-evasion does not, on the other hand, exclude a person from being a refugee, and a person may be a refugee in addition to being a deserter or draft-evader.

Paragraph 168 continues

> A person is clearly not a refugee if his only reason for desertion or draft-evasion is his dislike of military service or fear of combat. He may, however, be a refugee if his desertion or evasion of military service is concomitant with other relevant motives for leaving or remaining outside his country, or if he otherwise has reasons, within the meaning of the definition, to fear persecution.

(c) If, again owing to a Convention reason, the person is **denied due process of law.**

9. A deserter or draft-evader may be considered a refugee

> if it can be shown that he would suffer disproportionately severe punishment for the military offence on account of his race, religion, nationality, membership of a particular social group or political opinion. The same would apply if it can be shown that he has well-founded fear of persecution on these grounds beyond the punishment for desertion.[6]

10. There are also cases where the necessity to perform military service may be the sole ground for a claim to refugee status, i.e. when a person can show that the performance of military service would have required his participation in military action contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience. In this regard, the fact that the deserter may be linked to claimed abuses against military servicemen should be considered. According to paragraph 171 of the Handbook,

> not every conviction, genuine though it may be, will constitute a sufficient reason for claiming refugee status after desertion or draft-evasion. It is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action. Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft-evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution.[7]

11. The question as to whether objection to performing military service for reasons of conscience can give rise to a valid claim to refugee status should also be considered in the light of more recent developments in this field. An increasing number of States have introduced legislation or administrative regulations whereby persons who can invoke genuine reasons of conscience are exempted from military service, either entirely or subject to their performing alternative (i.e. civilian) service. The introduction of such legislation or administrative regulations has also been the subject of recommendations by international agencies. In the light of these developments, it would be open to Contracting States to grant refugee status to persons who object to performing military service for genuine reasons of conscience,[8] where alternative service was not available.

12. The genuineness of a person's political, religious, or moral convictions, or of his reasons of conscience for objecting to performing military service, will of course need to be established by a thorough investigation of his personal beliefs and background. The fact that he may have manifested his views prior to being called to arms, or that he may already have encountered difficulties with the authorities because of his convictions, are relevant considerations. Whether he has been

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[6] Ibid, para. 170.
[7] Ibid, para. 171.
[8] Ibid, para. 173.

drafted into compulsory service or joined the army as a volunteer may also be indicative of the genuineness of his convictions.[9]

13. A case for valid conscientious objection may be made where the military action in which the asylum seeker would be requested to participate is contrary to basic rules of human conduct. This, for instance, would be the case if the action has been condemned by the international community (Cf. Handbook, paragraph 171). This is not, however, indispensable. Even if the military action in which the person is required to participate is generally conducted within the limits prescribed by the laws of war, he/she may be regarded as a conscientious objector and, hence, qualify as a refugee, if he/she can establish that his/her moral, religious or political objections to participating in such action are so genuine, serious and profound that it would be morally wrong to require him/her to participate in such action. One case that may fall under this description is that of a member of an ethnic minority who, in a situation of internal conflict, may be required to participate in military action against his/her own ethnic community.

14. For the status determination of deserters, it is important to recall that those who commit war crimes, crimes against humanity, or serious non-political crimes may be excluded from refugee status as not deserving of international protection, even though they may otherwise have a well-founded fear of being persecuted for one of the Convention reasons. Important considerations and areas of questioning which must be taken into account in such exclusion matters include an examination of

- the **nature of the acts** for which the asylum seeker is responsible and whether they amount to the excludable acts (in this case, a consideration of crimes against humanity, including genocide, may be relevant) and
- the **level of responsibility** of the individual asylum-seeker for any such excludable acts.

15. It is also important to consider defenses to exclusion, including coercion, necessity, and lack of awareness of the nature of the act. Questioning on these areas and a careful analysis of the implications of the answers will be essential to a proper application of the exclusion cases. Important considerations might include the extent to which the asylum-seeker had knowledge of, and a moral choice to be involved or complicit in excludable acts.[10]

16. If, after a comprehensive interview, the decision is made to exclude a refugee, that person can no longer receive refugee protection or assistance from UNHCR. The person, if desiring to stay in the asylum country, should request the protection of the host country government on another basis. It should be noted that under international law provisions other than the 1951 Convention, persons may still be protected against refoulement. Examples of instruments providing such protection include the 1984 United Nations Convention against Torture and Other Cruel,

[9] Ibid, para. 175.
[10] Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, UN doc. HCR/GIP/03/05, 4 September 2003. See also The Exclusion Clauses, Guidelines on their Application, UNHCR, Geneva, 1996.

Inhuman or Degrading Treatment or Punishment and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.[11]

B. Journalists and Media workers, Human Rights Advocates, and Political Opponents

17. The Handbook discusses the grounds for an asylum claim based on political belief:

> Holding political opinions different from those of the Government is not in itself a ground for claiming refugee status, and an applicant must show that he has a fear of persecution for holding such opinions. This presupposes that the applicant holds opinions not tolerated by the authorities, which are critical of their policies or methods. It also presupposes that such opinions have come to the notice of the authorities or are attributed by them to the applicant. ... The relative importance or tenacity of the applicant's opinions--as far as this can be established from all the circumstances of the case--will also be relevant.[12]

18. While the definition speaks of persecution "for reasons of political opinion" it may not always be possible to establish a causal link between the opinion(s) expressed and the related measures suffered or feared by the applicant. Such measures have only rarely been based expressly on "opinion". More frequently, such measures take the form of sanctions for alleged criminal acts against the ruling power. It will, therefore, be necessary to establish the applicant's political opinion, which is at the root of his behavior, and the fact that it has led or may lead to the persecution that he claims to fear.[13]

19. Whether a political offender can also be considered a refugee will depend upon various other factors. Prosecution for an offence may, depending upon the circumstances, be a pretext for punishing the offender for his political opinions or the expression thereof. Again, there may be reason to believe that a political offender would be exposed to excessive or arbitrary punishment for the alleged offence. According to the Handbook, such excessive or arbitrary punishment will amount to persecution.[14]

C. Non-State Actors and Organized Crime-related Claims

20. Asylum seekers allege widespread corruption contributing to a lack of confidence in the authorities' willingness and ability to provide protection against organized crime. To some extent, relocation to another part of the Russian Federation or changing jobs or businesses may offer a practical means to escape from the threat

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[11] Further guidance on the relevant inclusion issues can be found in the UNHCR Handbook, paragraphs 167 - 174. Material in the "Suggested Framework of Analysis on Refusal To Perform Military Service As A Basis For A Well-Founded Fear Of Persecution", Immigration and Refugee Board of Canada (September 1992) may also be helpful in analyzing such cases. Further guidance on exclusion can be found in the UNHCR Handbook, paragraphs 147 - 163, and in the Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, UN doc. HCR/GIP/03/05, 4 September 2003. See also The Exclusion Clauses, Guidelines on their Application, UNHCR, Geneva, 1996. These materials can be found on the UNHCR Refworld CD ROM.

[12] Handbook. para 80.

[13] Ibid, paras. 81-84.

[14] Ibid, para. 85.

of organized criminal groups. The availability of internal flight alternative may be examined on the basis of UNHCR's position paper:

> Where the claimant fears persecution by a non-State agent of persecution, the main inquiries should include an assessment of the motivation of the persecutor, the ability of the persecutor to pursue the claimant in the proposed area, and the protection available to the claimant in that area from State authorities. As with questions involving State protection generally, the latter involves an evaluation of the ability and willingness of the State to protect the claimant from the harm feared. A State may, for instance, have lost effective control over its territory and thus not be able to protect. Laws and mechanisms for the claimant to obtain protection from the State may reflect the State's willingness, but, unless they are given effect in practice, they are not of themselves indicative of the availability of protection. Evidence of the State's inability or unwillingness to protect the claimant in the original persecution area will be relevant. It can be presumed that if the State is unable or unwilling to protect the individual in one part of the country, it may also not be able or willing to extend protection in other areas.[15]

21. Cases asserting refugee status based on membership of a particular social group frequently involve claimants who face risks of harm at the hands of non-State actors.[16] There is no requirement that the persecutor be a State actor. Where serious discriminatory or other offensive acts are committed by the local populace – e.g. organized criminal gangs -- they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection. Under the Convention a person must have a well-founded fear of being persecuted and that fear must be based on one (or more) of the Convention grounds.

22. Ultimately, the question is whether asylum seekers who have a well-founded fear of persecution from organized crime groups because of their economic activity and who cannot obtain the protection of the authorities can be qualified as belonging to a "particular social group" in the meaning of Article 1.A (2) of the 1951 Geneva Convention. In this regard, analysis should be based on UNHCR's Guidelines on Social Groups:

> a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one

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[15] UNHCR, Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, UN doc. HCR/GIP/03/04, 23 July 2003, para. 15; http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/rsddocview.pdf?CATEGORY=RSDLEGAL&id=3f2791a44; UNHCR, Relocating Internally as a Reasonable Alternative to Seeking Asylum (The So-Called "Internal Flight Alternative" or "Relocation Principle"), 9 February 1999, http://www.unhcr.ch/cgi-bin/texis/vtx/rsd

[16] Guidelines on International Protection: Membership of a particular social group, within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, UN Doc. HCR/GIP/02/02, 7 May 2002, para. 20.

which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights.[17]

23. This definition includes characteristics which are historical and therefore cannot be changed, and those which, though it is possible to change them, ought not to be required to be changed because they are so closely linked to the identity of the person or are an expression of fundamental human rights.[18] If common characteristic is linked to the risk of being persecuted, this does not meet the criteria for a social group.

24. If persecution is evident, the case to be made by victims of organized crime to establish persecution at the hands of non-state actors is more difficult, as they are not usually considered to belong to a "particular social group" within the meaning of the Convention, where the only common characteristic was a fear of persecution because of their refusal to co-operate with the organized crime.

25. However, as the "family" has been recognized in several jurisdictions as constituting social group, individual cases should be analyzed with this in mind.[19] Jurisprudence has shown that a family may assert a valid claim even if the criminal groups' relationship with the husband is not related to one of the Convention grounds.[20] In this case, it is the family, as such, that is targeted.

26. UNHCR has consistently taken the position that persecution that does not involve direct or indirect complicity by the state is nonetheless persecution within the meaning of the 1951 Refugee Convention.[21] In such cases, it needs to be demonstrated that the State was either unwilling or unable to provide effective protection against persecutory acts stemming from non-State agents.[22]

D. Ethnic Minorities

27. According to paragraph 74 of the Handbook, the term "nationality" in this context is not to be understood only as "citizenship". It refers also to membership of an ethnic or linguistic group and may occasionally overlap with the term "race". Persecution for reasons of nationality may consist of adverse attitudes and measures directed against a national (ethnic, linguistic) minority and in certain circumstances, the fact of belonging to such a minority may in itself give rise to well-founded fear of persecution.[23]

28. The co-existence within the boundaries of a State of two or more national (ethnic, linguistic) groups may create situations of conflict and also situations of

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[17] Ibid, para. 11.
[18] Ibid, para. 12.
[19] See Alienikoff, A., Protected characteristics and social perceptions: an analysis of the meaning of 'membership of a particular social group, p. 305-306, in Feller, E., Türk, V., and Nicholson, F. (eds.), Refugee Protection in International Law: UNHCR's Global Consultations on International Protection, Cambridge University Press, 2003, pp. 717.
[20] Ibid, p. 306.
[21] See, for example, UNHCR, An Overview of Protection Issues in Western Europe: Legislative Trends and Positions Taken by UNHCR, European Series, vol. 1, no. 3, September 1995, pp. 228-30; UNHCR's opinion provided to the Committee on Human Rights and Humanitarian Aid of the lower house of the German Parliament, hearing on non-State agents of persecution, 29 November 1999.
[22] Türk, Volker, Non-State Agents of Persecution, Chetail, V., and Gowlland-Debbas, V., (eds.) Switzerland and the International Protection of Refugees, Kluwer Law International, (Great Britain), pp. 95-110.
[23] Handbook, para. 74.

persecution or danger of persecution. It may not always be easy to distinguish between persecution for reasons of nationality and persecution for reasons of political opinion when a conflict between national groups is combined with political movements, particularly where a political movement is identified with a specific "nationality".[24]

29. Whereas in most cases persons belonging to a national minority fear persecution for reason of nationality, there have been many cases in various continents where a person belonging to a majority group may fear persecution by a dominant minority.[25]

E. Religious Minorities

30. The right to freedom of thought, conscience, and religion is one of the fundamental rights and freedoms in international human rights law. In determining religion-based claims, it is therefore useful, inter alia, to draw on Article 18 of the 1948 Universal Declaration of Human Rights (the "Universal Declaration") and Articles 18 and 27 of the 1966 International Covenant on Civil and Political Rights (the "International Covenant"). Also relevant are the General Comments issued by the Human Rights Committee,[26] the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, the 1992 Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities and the body of reports of the Special Rapporteur on Religious Intolerance.[27] These international human rights standards provide guidance in defining the term "religion" also in the context of international refugee law, against which action taken by States to restrict or prohibit certain practices can be examined. Guidance should be drawn from UNHCR's Guidelines on Religion-based Refugee Claims.[28]

31. Persecution for "reasons of religion" may assume various forms, e.g. prohibition of membership of a religious community, of worship in private or in public, of religious instruction, or serious measures of discrimination imposed on persons because they practise their religion or belong to a particular religious community.[29]

32. Mere membership of a particular religious community will normally not be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground.[30]

33. Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious

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[24] Ibid, para 75.
[25] Ibid, para. 76.
[26] See, in particular, Human Rights Committee, General Comment No. 22, adopted 20 July 1993, UN doc. CCPR/C/21/Rev.1/ADD.4, 27 September 1993.
[27] The latter can be found at http://www.unhchr.ch/huridocda/huridoca.nsf/FramePage/intolerance-En?OpenDocument. Relevant regional instruments include Article 9 of the 1950 European Convention on Human Rights; Article 12 of the 1969 American Convention on Human Rights; Article 8 of the 1981 African Charter on Human and Peoples' Rights.
[28] Guidelines On International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, UN doc. HCR/GIP/04/06, 28 April 2004.
[29] Handbook, para 72.
[30] Ibid, para 73.

intolerance, amounting to persecution, in a country otherwise secular, but where sizeable fractions of the population do not respect the religious beliefs of other parts of the population. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.[31]

34. Article 18(3) of the International Covenant permits restrictions on the "freedom to manifest one's religion or beliefs" if these limits "are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others". As the Human Rights Committee notes: "Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner."[32] In assessing the legitimacy of the restriction or limitation at issue, it is therefore necessary to analyze carefully why and how it was imposed. Permissible restrictions or limitations could include measures to prevent criminal activities (for example, ritual killings), or harmful traditional practices and/or limitations on religious practices injurious to the best interests of the child, as judged by international law standards. Another justifiable, even necessary, restriction could involve the criminalization of hate speech, including when committed in the name of religion. The fact that a restriction on the exercise of a religious freedom finds the support of the majority of the population in the claimant's country of origin and/or is limited to the manifestation of the religion in public is irrelevant.[33]

35. In determining whether restrictions or limitations rise to the level of persecution, the decision-maker must not only take into account international human rights standards, including lawful limitations on the exercise of religious freedom, but also evaluate the breadth of the restriction and the severity of any punishment for noncompliance. The importance or centrality of the practice within the religion and/or to the individual personally is also relevant.[34]

F. Gender-related Claims

36. Gender-related claims have typically encompassed, although are by no means limited to, acts of sexual violence, family/domestic violence, coerced family planning … punishment for transgression of social mores, and discrimination against homosexuals.[35]

37. Refugee claims based on differing sexual orientation contain a gender element. A claimant's sexuality or sexual practices may be relevant to a refugee claim where

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[31] Ibid, para 65. See also Guidelines On International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, UN doc. HCR/GIP/04/06, 28 April 2004.

[32] See Human Rights Committee, General Comment No. 22, paragraph 8.

[33] Guidelines On International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, UN doc. HCR/GIP/04/06, 28 April 2004, para. 15.

[34] Ibid, para. 16.

[35] Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, UN doc. HCR/GIP/02/01, 7 May 2002, para. 3.

he or she has been subject to persecutory (including discriminatory) action because of his or her sexuality or sexual practices. In many such cases, the claimant has refused to adhere to socially or culturally defined roles or expectations of behavior attributed to his or her sex. The most common claims involve homosexuals, transsexuals, or transvestites, who have faced extreme public hostility, violence, abuse, or severe or cumulative discrimination.[36]

38. Even where homosexual practices are not criminalized, a claimant could still establish a valid claim where the State condones or tolerates discriminatory practices or harm perpetrated against him or her, or where the State is unable to protect effectively the claimant against such harm.[37]

39. Homosexuals would fall within the definition of a particular social group, as sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently than men. Their characteristics also identify them as a group in society, subjecting them to different treatment and standards in some countries. Equally, this definition would encompass homosexuals, transsexuals, or transvestites.[38]

40. The Handbook, as well as number of states, has recognized both homosexuals and women as a "particular group" within the meaning of the 1951 Convention.[39]

G. Unaccompanied Minors/Separated Children

41. The question of whether an unaccompanied minor may qualify for refugee status must be determined in the first instance according to the degree of his mental development and maturity. In the case of unaccompanied minors, it will generally be necessary to enroll the services of experts conversant with child mentality. A child--and for that matter, an adolescent--not being legally independent should, if appropriate, have a guardian appointed whose task it would be to promote a decision that will be in the minor's best interests. In the absence of parents or of a legally appointed guardian, it is for the authorities to ensure that the interests of an applicant for refugee status who is a minor are fully safeguarded.[40]

42. Where the minor has not reached a sufficient degree of maturity to make it possible to establish well-founded fear in the same way as for an adult, it may be necessary to have greater regard to certain objective factors. Thus, if an unaccompanied minor finds himself in the company of a group of refugees, this may--depending on the circumstances--indicate that the minor is also a refugee.[41]

43. The circumstances of the parents and other family members, including their situation in the minor's country of origin, should be taken into account. If there is

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[36] Ibid, para. 16.
[37] Ibid, para 17.
[38] Ibid, para. 30.
[39] See UNHCR Guidelines on International Protection, "Membership of a Particular Social Group" within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees", UN doc. HCR/GIP/02/02, 7 May 2002, paras. 18 and 19, and Alienikoff, A., Protected characteristics and social perceptions: an analysis of the meaning of "membership of a particular social group," p. 286, in Feller, E., Türk, V., and Nicholson, F. (eds.), Refugee Protection in International Law: UNHCR's Global Consultations on International Protection, Cambridge University Press, 2003, pp.717.
[40] Handbook, para. 214.
[41] Ibid, para. 217.

reason to believe that the parents wish their child to be outside the country of origin on grounds of well-founded fear of persecution, the child himself may be presumed to have such fear.[42]

44. If the will of the parents cannot be ascertained or if such will is in doubt or in conflict with the will of the child, then the examiner, in cooperation with the experts assisting him, will have to come to a decision as to the well-foundedness of the minor's fear on the basis of all the known circumstances, which may call for a liberal application of the benefit of the doubt.[43]

H. Conclusions

45. The claims of the following categories of persons raise issues calling for careful analysis against considerations which have been held to meet refugee status under the 1951 Geneva Convention criteria:

- Ethnic minorities that may be vulnerable to physical attack or harassment, especially by non-state actors;
- Religious Minorities may also be vulnerable to physical attack or harassment, especially by non-state actors, and are at times subject to public denunciations by public officials (e.g., Muslims, Jews). Several religious organisations have had difficulty obtaining a legal identity;
- Women and homosexuals alleging official discrimination or harassment by non-state actors;
- Draft evaders and deserters, especially those opposing the armed conflict in Chechnya;
- Journalists and media workers openly critical of the federal and/or local authorities;
- Human rights defenders openly criticizing the federal and/or local authorities;
- Prominent political opponents, especially those with a solid financial base, whose political ambitions may be perceived as a threat by the authorities;
- Individuals and their families who are victims of syndicated crime and are unable to secure the protection of the state;
- Unaccompanied minors, who may not enjoy adequate or sufficient protection from exploitation.

46. Depending on how States assess the validity and credibility of the claims, UNHCR urges that refugees be enabled to enjoy the full range of protections as envisaged in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. In the event that these are not for any reason judged to be applicable but individuals are nevertheless found to have serious concerns meriting an international protection response, UNHCR recommends that they be given access to complementary forms of protection.

47. As was earlier indicated, this paper does not deal with claims from Chechens. For this group, UNHCR's position, to summarize, has been that where the protection of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto is not available, ethnic Chechen asylum-seekers whose place of residence is Chechnya should be granted subsidiary forms of protection entailing protection

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[42] Handbook, para. 218.
[43] Ibid, para 219. See also UNHCR, Refugee Children, Guidelines on Protection and Care, UNHCR Geneva, 1994.

from refoulement. For as long as the situation in Chechnya itself is not conducive to the promotion of return/repatriation, UNHCR's position takes into account the fact that there is no genuine internal flight alternative[44] or relocation in other parts of the Russian Federation.[45]

[44] Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, UN doc. HCR/GIP/03/04, 23 July 2003.

[45] See, in particular, UNHCR, Paper on the Situation of Asylum-Seekers from the Russian Federation in the Context of the Situation in Chechnya, February 2003, Section II, pp. 9-25.

ANNEXES

The attached annexes compile relevant country of origin information on the Russian Federation from publicly available sources. The sources have been selected for their authority and reliability. They do not, however, necessarily reflect the opinion of UNHCR.

A. Background

1. General Information on the Russian Federation

1. The Russian Federation, the former Russian Soviet Federative Socialist Republic (RSFSR), covers an area of 17,075,400 sq km. It stretches from the Baltic Sea to the Northern Pacific, bordering Norway, Finland, Latvia, Estonia, Belarus and Ukraine in the West, Turkey in the South West, by its maritime border, Georgia, Azerbaijan, Kazakhstan, China, Mongolia and North-Korea in the South and Far-East. The Russian Federation has a population of 145.2 million (2002 census).[1] The largest cities are Moscow, the capital city, with just over ten million inhabitants and St. Petersburg with nearly five million. The ratio of urban and rural population has remained at the level of the 1980s with 73 per cent and 27 per cent respectively. There are currently ten million more women than men, although the birthrate for boys is higher. More than 160 ethnic groups are represented in Russia.[2]

2. The official language is Russian, but a large number of other languages are also used. Religious adherence is varied, with many religions closely connected with particular ethnic groups. Christianity is the major religion, mostly adhered to by ethnic Russians and other Slavs, with the Russian Orthodox Church the largest denomination. The main concentrations of Muslims are among Volga Tatars, Chuvash and Bashkirs, and the peoples of the Northern Caucasus, including the Chechen, Ingush, Kabardinians and the peoples of Dagestan. Buddhism is the main religion of the Buryats, the Tyvans, and the Kalmyks.[3]

3. The Russian currency is the rouble[4], re-denominated on 1 January 1998 at 1 new rouble = 1,000 old roubles.[5] The Russian national flag bears three equal horizontal bands of white (on top), blue, and red.[6]

4. The Constitution of the Russian Federation (also known as Russia), entered into force on 25 December 1993, following its approval on 12 December 1993 by a majority of participants in a nation-wide plebiscite.[7] It established the Russian Federation as a "democratic federal rule-of-law state with a republican form of government" (Article 1). The complex federal system is comprised of 89 component parts: 21 republics, 1 autonomous *oblast* (province), 10 autonomous

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[1] State Committee of the RF on Statistics, www.gks.ru/PEREPIS/osn_itog.htm
[2] Main Results of All-Russia Population Census of 2002, www.gks.ru/PEREPIS/osn_itog.htm (in Russian; accessed in December 2003).
[3] UK Home Office, Immigration and Nationality Directorate, the Country Information and Policy Unit, Russian Federation, April 2003, [Internet]
[4] Article 75 of the Constitution of the Russian Federation.
[5] Economist Intelligence Unit (EIU), Country Profile 2003 – Russia, [Internet]
[6] Article 1of the Federal Constitutional Law of the RF # 1 FKZ of 25 December 2000 "On the State Flag of the Russian Federation".
[7] Europa Publications Limited, the Europa World Year Book 1999, Vol. II, 40th edition, London, 1999, p. 2982.

okrugs (districts), 55 predominantly Russian oblasts and *krais*, and 2 cities – Moscow and St. Petersburg – with special representative status.[8] Despite the variety of denominations, all constituent subjects of the Russian Federation are equal under the Constitution.

5. State power in the Russian Federation is exercised by the President of the Russian Federation and the government, the Federal Assembly (Federation Council and State Duma), and the courts of the Russian Federation.[9] The President is elected for a four-year-term and can be re-elected for one additional term. As the head of state and commander of the armed forces, the President has a broad range of powers including the ability to appoint the Chairman (Prime Minister) of the Russian Federation. The President also has the power to issue decrees and executive orders insofar as these do not contravene the Constitution.[10] Republic presidents and the governors of krais and oblasts are popularly elected.[11]

6. The Federal Assembly – the Russian Parliament – is the "supreme representative and legislative body of the Russian Federation".[12] The Federal Assembly is comprised of two chambers: the Federation Council (the "Upper House") and the State Duma (the "Lower House"). Each "subject" of the Russian Federation has two representatives in the Federation Council; regional legislatures name one member and regional executive branches appoint the other. There are currently 178 representatives in the Federation Council. The Federation Council must approve decrees introduced by the President, calls presidential elections, and possesses the power to impeach the President.[13] The State Duma consists of 450 deputies who are elected for four-year terms. Among other powers, the State Duma approves the President's choice of Chairman, and can bring charges against the President for impeachment.[14]

7. As the legislative and executive branches of State power in the Russian Federation, the judiciary branch is independent. Judges are to be

> "independent and (...) obey only the Constitution of the Russian Federation and the federal law", cannot be replaced, and possess immunity. Their powers cannot be terminated or suspended "except under procedures and on grounds established by federal law".[15]

8. At the apex of the judiciary are the Constitutional Court and the Supreme Court. The Constitutional Court is comprised of 19 judges, whose functions include assessing the compliance of federal laws, presidential decrees and other federal and regional normative acts with the Constitution, as well as the constitutionality of international treaties and of bilateral treaties between the federal government and the subjects of the Federation. The Constitutional Court also settles disputes over the respective competence of different state bodies. The Supreme Court is the

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[8] Freedom House, Nations in Transit 2003: Russia, [Internet]
[9] Article 11 of the Constitution of the Russian Federation.
[10] See Chapter Four of the Constitution of the Russian Federation (Articles 80-93) for all the articles on the President of the Federation.
[11] Freedom House, Nations in Transit 2003: Russia, [Internet]
[12] Article 94 of the Constitution of the Russian Federation.
[13] The jurisdiction of the Federation Council is contained in Article 102 of the Constitution of the Russian Federation.
[14] See Article 103 of the Constitution of the Russian Federation.
[15] Articles 120-122 of the Constitution of the Russian Federation.

highest judicial authority on civil, criminal, and administrative law. Most business disputes are heard before arbitration courts headed by a Supreme Arbitration Court. Judges of these courts and the prosecutor-general – who appoints other prosecutors – are nominated by the President, subject to the approval of the Federation Council.[16]

9. Ten years after the start of transition, poverty is still a major issue. By the end of 2002, the Pravda estimated that approximately 44 million Russians lived below the poverty line.[17] A high proportion of poverty in the Russian Federation is transient and poverty numbers are sensitive to growth in the economy. According to the World Bank, growth would have a greater impact on poverty if it were based on a more diversified economy with a rapidly developing small and medium enterprises sector, instead of the current highly concentrated industrial structure dominated by export of natural resources.[18]

10. Article 30 of the Constitution guarantees the right "to create trade unions to protect one's interests". Although approximately 60 per cent of Russian workers belong to a trade union, this number actually represents a sharp decline since the Soviet era. The drop in membership is the result of both the proliferation of non-unionized jobs in the private sector and the inability of unions to perform the same functions they did under the previous regime. In February 2002, a new labor code came into force requiring all employers, irrespective of the type or nature of their ownership, to comply with labor laws. The new code also applies to foreign nationals working in the Russian Federation, unless otherwise stipulated in a federal law or international treaty. Employees now have the right to refuse to perform tasks that are not stipulated in their employment agreements or that pose an immediate danger to their health or life. The new code also provides for the protection of personal information, contains detailed regulations on health and safety in the workplace, and obliges employers to compensate employees for delays in the payment of salaries and other employment-related compensation.[19]

11. Although Russia remains the world's second major nuclear power, its military capability has shrunken considerably since the Soviet era. Russia's conscripts are often described as poorly trained, equipped, and motivated.[20] According to the Economist Intelligence Unit

> Its active armed forces totaled less than 1m in 2003, compared with 2.7m in June 1992 and an estimated 4m at the height of the Soviet Union's power. Defense spending has collapsed at a much faster pace than the head count, with the result that Russia's conscripts are poorly trained, equipped and motivated…Economic decline has left the army bereft of resources and equipment, as a result of which it is severely demoralized. Conscription, in particular, is deeply unpopular, as the

[16] Article 128 of the Constitution of the Russian Federation.
[17] Pravda Online, The Death of Russia, 25 November 2002 [Internet]
[18] World Bank, Country Brief, Russian Federation, [Internet]
[19] The Labor Code of the Russian Federation # 197-FZ of December 30, 2001.
[20] Economist Intelligence Unit (EIU), Country Profile 2003 – Russia, [Internet]

loss of morale has been accompanied by increasing brutality within the army.[21]

12. The Belarus-Russia Union Treaty was signed in December 1999. This treaty envisages the creation of a union state with a supranational legislative body, and the close coordination of defense, economic and monetary policies. The treaty does not provide for the full incorporation of Belarus into the Russian Federation, but instead reconfirms the continued sovereignty of both states. Under the Union-Treaty, the border between the two countries remains an international border. Russia's interests are served by the defense provisions of the treaty, which allow it to make use of Belarus' extensive military infrastructure and station Russian forces on NATO's new eastern border. In return, the Belarusian administration benefits from easy access to the Russian market for Belarusian manufactured goods and low energy import prices. Full harmonization of customs tariffs is not envisaged until 2005.[22] In November 2000, President Putin and Belarusian President Alexander Lukashenko agreed on the unification of monetary systems and introduction of a single currency by 2008.

13. The conflict in Chechnya resumed in 1999. Many thousands have reportedly died since Russian troops were first sent in to put down a rebellion in 1994 and guerrilla fighters continue to mount attacks.[23]

2. The Political Context and Actors since 1991

14. On 31 December 1991, the Soviet Union formally ceased to exist.[24] By December 1993, the new Commonwealth of Independent States (CIS) included all the former Soviet republics except the three Baltic states of Latvia, Lithuania, and Estonia.

15. Boris Yeltsin became the first elected President of the Russian Soviet Federative Socialist Republic (RSFSR) on 12 June 1991, some six months before the formal end of the Soviet Union and the formal establishment of the Russian Federation (Russia).[25] In the early years of his presidency, President Yeltsin implemented a number of economic and political reforms, including the adoption of the new Constitution of 1993, which guaranteed broad powers for the President and diminished the role of the legislature. The Parliament sought to increase its power throughout Yeltsin's presidency. The State Duma attempted to impeach the President on several occasions.

16. In 1993, when President Yeltsin suspended the legislature, Duma deputies barricaded themselves inside the Parliament, prompting President Yeltsin to order a bombardment of the building by Russian army tanks.[26] Despite his diminishing popularity, the deterioration of the economy and rumors about his ill health, as well

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[21] Economist Intelligence Unit (EIU), Country Profile 2003, Russia, May 2003.
[22] EIU, Country Profile 2003, Belarus.
[23] Exact figures are difficult to establish, as they always vary depending on the source consulted (e.g. governmental source, human rights NGOs etc.).
[24] Shirin Akiner, Central Asia: A Survey of the Region and the Five Republics, Writenet Paper No. 22, February 2000, p. 14. All Writenet papers referred to in this paper are available on Refworld.
[25] Keesing's, Record of World Events, Vol. 37, June 1991 – Soviet Union: Russian Presidential elections, and Vol. 42, August 1996 – Russia: Inauguration of Yeltsin as President.
[26] Europa Publications Limited, The Europa World Year Book 1999, 1999, p. 2965.

as Russia's military campaign in Chechnya, President Yeltsin was re-elected on 3 July 1996, after two rounds of voting.[27]

17. In 1998, as the economic situation in Russia worsened, President Yeltsin dismissed three Prime Ministers with a cabinet reshuffle on each occasion. President Yeltsin dismissed his fourth government in 17 months on 9 August 1999 and nominated Mr. Vladimir Putin, the head of the Federal Security Service (FSB) and Secretary of the Security Council, as both Russia's Prime Minister-designate and as his successor as Russian President.[28]

18. Due to retire at the end of his second and last term in June 2000, President Yeltsin resigned early on 31 December 1999. Prime Minister Putin became acting President, pending elections to be held within three months.[29]

19. Vladimir Putin was elected President of the Russian Federation on 26 March 2000. Following his formal inauguration on 7 May 2000, President Putin relinquished the post of Prime Minister, which, as acting President, he had filled himself. He formed a new government, which was completed by 22 May, headed by former First Deputy Prime Minister Mikhail Kasyanov.[30] For the first time in Russia's post-Soviet history, both houses of parliament were supportive of the President and his policies.[31]

20. In September 2001, President Putin supported the U.S. in the aftermath of the September 11 terrorist attacks, breaking with long-standing foreign policy by not opposing the establishment by the U.S. of military bases in the former Soviet republics of Central Asia.[32]

21. The conflict in Chechnya has impacted in a variety of ways on the political landscape in the Russian Federation, and was also a prominent issue in President Putin's 2000 election. Through its impact beyond the confines of the Chechen Republic, it has also raised serious public security concerns and strongly colored public perceptions of Chechnya and Chechens. In October 2002, some 50 Chechens took more than 700 people hostage in a Moscow theatre demanding the immediate withdrawal of Russian troops from Chechnya. Following a standoff of several days, Russian troops pumped in gas and stormed the theatre, resulting in the deaths of the rebels and some 120 hostages.[33]

22. In March 2003, federal authorities hailed the Chechen referendum vote in favor of a new constitution stipulating that the Republic is part of the Russian Federation. Human rights groups, among others, were strongly critical of the Russian Federation for pushing ahead with referendum before total peace had been

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[27] EIU, Country Profile 2000 – Russia, 2000, p. 6. The Russian Federation has a two-ballot system for electing the president. If no candidate wins a majority in the first round, a second round is needed. President Yeltsin won the first round in 1996 with 35.3 per cent. See: Michael McFaul, Putin in Power, Current History, October 2000, p. 307.

[28] Ibid, Vol. 45, August 1999 – Russia: Dismissal of government – Appointment of President's preferred successor.

[29] Ibid, Vol. 45, December 1999 – Russia: Resignation of President Yeltsin.

[30] Keesing's, Record of World Events, Vol. 46, May 2000 – Russia: Formation of a new government.

[31] Economist Intelligence Unit (EIU), Country Profile 2003 – Russia, [Internet]

[32] Economist Intelligence Unit (EIU), Country Profile 2003 – Russia, [Internet]

[33] UK Home Office, Immigration and Nationality Directorate, the Country Information and Policy Unit, Russian Federation, April 2003, [Internet]

established.[34] Akhmad Kadyrov won the presidential election in Chechnya held on 5 October 2003.[35]

23. In the privatization years of the 1990s, a small group of individuals, often referred to as "oligarchs", acquired vast interests in the energy and media sectors. Some analysts believed that Yeltsin allowed their influence to extend too far into the political field. President Putin acted to reign in their political influence. and some oligarchs found themselves facing criminal investigation. Others felt it necessary to leave the country.[36]

24. After three years of living in self-imposed exile in London, Boris Berezovsky, once an influential media tycoon and a power broker, was granted political asylum in Great Britain. The Russian Federation sought Berezovsky's immediate extradition on fraud charges. According to his aide, the British Home Office sent a letter, dated 9 September 2003, to Berezovsky confirming that his request for asylum had been accepted.[37] Mr. Vladimir Gusinsky, flamboyant theatre director who established a banking business in the dying days of the USSR and later financed newspapers and Russia's first independent television station, the latter often critical of the Government's policy, is currently out of the Russian Federation.[38]

25. Mikhail Khodorkovsky, possibly Russia's richest man and former Chief Executive of Yukos, which would have been Russia's biggest oil company had the merger with rival Sibneft been fully carried out, was arrested on 25 October 2003 and charged with offences including defrauding the state out of $1bn. The arrest sparked some concern about a Government push against Russia's business barons ahead of upcoming parliamentary and presidential elections.[39] President Putin said the detention of the company's chief executive was not a sign that Moscow was considering re-nationalization of privatized industries.[40] Meanwhile, a Moscow court turned down a request for bail by Mr. Khodorkovsky.[41]

a) Political Party System

26. Article 3 of the Constitution provides for free elections, and Article 13 guarantees a multiparty system. Election rules differ among regions. Under the recent changes in election laws, only courts will be able to disqualify candidates for campaign violations and, in any case, no later than five days before the election. There will also be a finite number of reasons for which a candidate can be excluded.[42]

27. The political party scene in the Russian Federation was highly volatile and fragmented throughout the 1990s but began to settle. Some 26 parties were included on the ballot for the 1999 election to the Duma, compared with 43 in 1995. Only six of them crossed the 5 per cent threshold for parliamentary

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[34] BBC NEWS, Country Profile: Russia, [Internet]
[35] Economist Intelligence Unit (EIU), Country Forecast 2003 – Russia, [Internet]
[36] BBC NEWS, Country Profile: Russia, [Internet]
[37] GAZETA.RU, "Berezovsky Granted Refugee Status", 11 September 2003, [Internet]
[38] BBC NEWS, "Russia's Oligarchs: Where are they now?", 27 October 2003, [Internet]
[39] Ibid, "Tycoon Arrest Sparks Share Slide", 27 October 2003, [Internet]
[40] Ibid, "Putin Defends Yukos Arrest", 4 November 2003, [Internet]; see also Newsru.com, "Putin hints new arrests in the big business", 4 November 2003, [Internet]
[41] BBC NEWS, "Yukos Tycoon to Stay in Jail", 11 November 2003, [Internet]; see also Kommersant, "Khodorkovsky will stay in Jail", 15 January 2004, [Internet]
[42] Freedom House, Nations in Transit 2003: Russia, [Internet]

representation, and of these, only the Communist Party of the Russian Federation (CPRF) could boast a substantial nationwide organization. Most other parties are very small, often organized around one prominent personality.[43] The Communist Party of the Russian Federation (CPRF), successor to the Soviet-era Communist Party, was launched in February 1993. With more than 500,000 members and 20,000 primary organizations, it is easily the largest party in the Russian Federation. However, the CPRF is seen as an ideologically incoherent coalition of social democrats, Stalinists and nationalists, with very different views on the past and planning for the future.[44]

28. United Russia – the Duma's strongest political force – was set up in February 2002 as a result of the merger between the pro-government Unity and the Fatherland-All Russia Movement. Unity consisted mainly of middle-ranking regional officials and lacked any clear ideology other than its strong affiliation with President Putin, then prime minister. The enormous financial and media backing engineered by the Kremlin secured it second place in the party-list voting in 1999. However, United Russia was criticized for not having transformed itself into a disciplined and coherent political force able to pose a sustained challenge to the CPRF's dominance. In early 2003, internal divisions resulted in a leadership reshuffle, and its approval ratings weakened further.[45]

29. Although voter participation in the 1999 parliamentary and 2000 presidential elections topped 60 per cent, membership in political parties remains low. Large parties, including the Communist Party of the Russian Federation (CPRF), Yabloko, and the Liberal Democratic Party (LDPR), function at the national and sub-national levels. Other parties range from a few hundred members to several thousand.

30. National political parties do not figure prominently in the political institutions of Russia's provinces. Provincial politicians are reported to either shun party labels or easily exchange and discard them. More than three-fourths of winning candidates in regional legislatures are not even affiliated with national parties, despite recent efforts by national parties to forge regional groupings. The fact that only a few regional and local legislatures adopted electoral systems based on proportional representation inhibits provincial party development.[46]

31. To participate in the elections, political parties, political organizations, and political movements must register with the government. Article 13 of the Constitution prohibits activity by parties that advocate the violent overthrow of the State, support the dismantling of the Russian Federation, carry arms, or incite social, racial, national, or religious strife. On these grounds, the Ministry of Justice refused to register parties and movements whose activities allegedly violate the Russian Constitution. Ministry officials say that the law forbids them from registering any political party that is religious in nature. In mid-2002, the Russian Christian-Democratic Party (RKhDP) embarked on its own challenge to the ban on religious parties when the Ministry of Justice refused to register it. RKhDP leaders do not consider the party religious.

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[43] Economist Intelligence Unit (EIU), Country Profile 2003 – Russia, [Internet]
[44] Economist Intelligence Unit (EIU), Country Profile 2003 – Russia, [Internet]
[45] Ibid.
[46] Freedom House, Nations in Transit 2003: Russia, [Internet]

32. Although Russia has nearly 200 parties, few are expected to survive the stringent process of re-registration that the Duma approved in 2001. To register under the new law,[47] a party must have more than 10,000 members, branches in at least 50 per cent of federation units, and a minimum of 100 members in each branch. If a group does not meet these criteria, it can be abolished by a decision of the Supreme Court. The law also mandates state financing of parties that receive more than 3 per cent of the vote in the preceding election, limits private contributions to political parties to 3,000 roubles (US$ 100) a year per individual, and bans contributions by foreigners and international organizations.[48]

33. In the 7 December 2003 elections to the State Duma, the United Russia Party won with almost 38 per cent of all votes. The Communist Party came in second (approximately 13 per cent – as compared to 24 per cent in the 1999 elections), followed by the nationalist party of Vladimir Zhirinovsky (approximately 12 per cent). The Rodina party, co-chaired by a former communist and a nationalist, who benefited from broad media coverage during the election campaign, diverted votes from the Communist Party and weaken the latter's representation at the State Duma. The liberal Union of Right Forces and Yabloko parties did not reach the 5 per cent threshold necessary to ensure their representation in the lower house. OSCE observers criticized the biased use of taxpayer money and state television to promote certain parties, mainly the victorious United Russia Party of Vladimir Putin. "In this election the enormous advantage of incumbency and access to state equipment, resources and buildings led to the election result being overwhelmingly distorted," said Bruce George, president of the parliamentary assembly of the OSCE.[49] All together, 23 parties competed in the elections. The voter turn out was estimated at 56 per cent.[50]

3. Review of Material on the General Human Rights Considerations in the Russian Federation

a) Human Rights Mechanisms and Rule of Law

34. Article 2 of the Russian Constitution defines the individual and his or her rights and freedoms as "the supreme value" of the State. Subsequent articles guarantee freedom of movement, conscience, belief, expression, association, and assembly. Article 46 guarantees judicial protection and affirms the individuals right, "if all available means of legal protection inside the state have been exhausted", to appeal to international bodies. Article 15(4) states that generally recognized principles and norms of international law, and the international treaties to which Russia is a party, are constituent parts of its legal system and take primacy over domestic laws.[51] In 1998, the Russian Federation ratified the European Convention on Human Rights (ECHR), which gives Russian citizens the right to file appeals with the European

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[47] The Federal Law on Political Parties of 11 July 2001, adopted in June 2001, entered into force in July 2001 and was amended in March and July 2002.
[48] Ibid.
[49] BBC News, US Shares Russia Poll Concerns, 8 December 2003, [Internet]
[50] Ibid.
[51] The recent resolution no. 5 of the Russian Federation Supreme Court of 10 October 2003 "On the Application by General Jurisdiction Courts of Generally Recognized Rules and Principles of International Law and International Treaties of the Russian Federation" emphasizes this once again and adds that human rights and liberties emanating there from have direct effect within Russia's jurisdiction (para. 1). This relates also to norms contained in the ECHR.

Court of Human Rights in Strasbourg. The ECHR entered into force for Russia in May 1998. By October 2001, the Court in Strasbourg had received more than 7,000 applications relating to Russia, including dozens from Chechnya. Many of these applications were found inadmissible on formal grounds, whereas others passed the first stage of proceedings to be considered by the Court on the merits.[52] In 2002, several thousand more applications were submitted to Strasbourg. By November 2003, there were some 16,000 complaints pending with the Court, the majority concerning the situation in Russian detention facilities.

35. Mr. Vladimir Lukin, former First Deputy Chairman of the Yabloko party is the human rights ombudsman, succeeding Mr. Oleg Mironov on 11 February 2003. While the ombudsman's office has no power to make or change the law, the ombudsman can, however, propose amendments. He has commented on a broad range of human rights issues. His office is composed of more than 150 employees, with several specialized sections responsible for investigating complaints of human rights violations.[53] More than 20,000 people appeal to this office annually.

36. Unlike the federal ombudsman institution, regional ombudsmen have no basis in the Constitution and derive their authority solely from Article 5 of the 1997 Federal Law on Ombudsmen, which allows subjects of the federation to appoint ombudsmen from their own budgets. The powers of regional ombudsmen vary according to the legislation that established their office. By the end of 2002, there were 20 regions with regional ombudsperson institutions with responsibilities similar to those of the national ombudsman. Other regions established more general human rights committees. The effectiveness of the regional institutions varies significantly from region to region, depending on their mandates as well as their financial and human resources.[54]

37. In addition, there exists the President's Human Rights Commission, headed by Ella Pamfilova, whose main role is to provide advice to the Russian President on various human rights issues, including legislation.

38. Although Russia's judicial system reportedly remains weak,[55] a number of positive steps were taken in 2002 to remedy the deficiencies. On 30 October 2002, the Federation Council unanimously approved a new civil procedure code[56] that regulates labor and family disputes, limits the role of prosecutors in civil disputes, and establishes strict deadlines for each phase of a civil dispute. Russia's new criminal procedure code came into force on 1 July 2002.[57] The code aims to enhance the rights of suspects by requiring a court warrant for searches and arrests and by banning the return of cases for additional investigation – a practice that often resulted in long imprisonments. The Code stipulates that the first interrogation of a suspect take place within 24 hours of detention and that the suspect has the right to a two-hour consultation with an attorney in advance. The

[52] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 4.
[53] The Commissioner on Human Rights in the Russian Federation, http://ombudsman.gov.ru. All subsequent references to the Commissioner on Human Rights, or the Ombudsman, are taken from this website.
[54] Ibid.
[55] EIU, Country Profile 2003 [internet]
[56] The Civil Procedure Code of the Russian Federation of 14 November 2002 entered into force on 1 February 2003.
[57] The Criminal-Procedural Code of the Russian Federation of 18 December 2001 was passed by Parliament in November-December 2001.

new Code also attempts to give more power to defense attorneys by allowing them to conduct independent investigations of a case.[58] After the introduction of the new Code, the number of criminal cases opened by the Prosecutor's Offices in 2002 declined by 25 per cent, the number of suspects placed in pre-trial detention declined by 30 per cent, and the courts rejected 15 per cent of requests for arrest warrants.[59]

39. Freedom House, a non-profit organization, released on 29 May 2003 a detailed report noting the deterioration of rights and freedoms in the Russian Federation and called on President Putin to take steps to address critical issues of concern, particularly in the areas of free and fair elections and freedom of expression. It was indicated that the Russian Federation lost considerable ground in the protection of basic political rights and civil liberties over the last seven years.[60] In October 2003, the UN Human Rights Committee discussed Russia's fifth periodic report relating to its implementation of the International Covenant on Civil and Political Rights (ICCPR). According to media reports, the Committee was concerned about a substantial number of issues.[61] At the same time, the discussion between the high-level delegation from Russia and the Committee's experts was reportedly constructive.

b) The Death Penalty

40. The UN Human Rights Committee noted that the death penalty was abolished *de facto* by the Presidential decree of 16 May 1996. The Committee also noted that the Russian Federation envisages legislation to abolish the death penalty. It was concerned, however, that the current moratorium will automatically end once the jury system has been introduced in all constituent entities of the Russian Federation, scheduled to be completed in 2007.[62] The RF Ombudsman in 2002 had expressed his concern that "further delay in the ratification of Protocol No.6 may damage the international prestige of Russia".[63]

41. The 20002 Russian report to the Human Rights Committee stated the following on the death penalty:

> The death penalty has been retained in the Russian Criminal Code as an exceptional punishment, but the range of especially grave crimes for which it may be ordered is now limited to homicide and attempted homicide. The direction as to mode of execution - shooting - has also been abolished, and commutation of a death sentence into other forms of punishment has been introduced as a measure of clemency. The crimes for which the death penalty may be ordered comprise deliberate homicide in aggravating circumstances; making an attempt on the life

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[58] Freedom House, Nations in Transit 2003: Russia, [Internet]
[59] U.S. Department of State Country Report on Human Rights Practices, Russia – 2002, 31 March 2003, [Internet] Also found on Refworld CD Rom set.
[60] Freedom House, Press Release, "New Report Details Disturbing Democracy Decline in Russia", 29 May 2003, [Internet]
[61] BBC Monitoring, "Russian minister hits at bias at UN rights session", 24 October 2003; United Nations Press Release, "Human Rights Committee Concludes Review of Report Presented by the Russian Federation", 24 October 2003; AFP, "UN rights committee blasts abuse and impunity in Russia", 7 November 2003.
[62] United Nations, Human Rights Committee, "Concluding observations of the Human Rights Committee: Russian Federation", 6 November 2003, CCPR/CO/79/RUS, [Internet]
[63] Special Report of the RF Ombudsman, of 20 May 2002.

> of a State or public figure; making an attempt on the life of an individual administering justice or conducting preliminary investigations; making an attempt on the life of an employee of the law-enforcement authorities; and genocide. The death penalty cannot be handed down for any other crime covered by the new Criminal Code, not even such serious offences as treason and espionage. But a person guilty of terrorism, hostage-taking, banditry or other dangerous crime may be sentenced to death if his actions were accompanied by deliberate killing of the victims. Article 79 of the Criminal Code states that the death penalty may not be imposed on women, individuals who were under 18 at the time of the crime, and men who have reached the age of 65 by the time the court passes sentence. If clemency is granted, the death penalty may be commuted to life imprisonment or imprisonment for a term of 25 years.[64]

c) Prison, Detention and Torture

42. Article 21 of the Constitution prohibits torture, violence, and "other brutal or humiliating treatment or punishment". Prison conditions remain harsh, as the system lacks proper funding. Overcrowding is a serious problem and tuberculosis is widespread. Violence among inmates, including beatings and rape, is said to be common.[65] The Government reduced the prison population in 2002 by releasing some 200,000 prisoners. According to the recent census, the country has 919,000 prisoners, including 130,000 in pre-trial detention. Nonetheless, the Russian Federation has the highest number of prison inmates per capita. Alternative forms of sanctions for minor offences are also being introduced.

43. In May 2002 the UN Committee against Torture expressed its concern about numerous and consistent allegations of widespread torture and ill treatment of detainees by law-enforcement personnel, commonly with a view to obtaining confessions.[66] People were at greatest risk of torture and ill-treatment in police

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[64] Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Fifth periodic report by the Russian Federation, Human Rights Committee, CCPR/C/RUS/2002/5, 9 December 2002, para 43. The report further stated

> In 1996 (before the moratorium was imposed), courts of first instance imposed the death penalty on 213 convicts (2.9 per cent of the total number convicted of crimes for which the law permitted the death penalty as exceptional punishment). That same year, sentence was carried out on 93 convicts. In 1997, the death penalty was imposed on 202 convicts (3 per cent of the total convicted of crimes for which the then current Russian Criminal Code permitted the death penalty as exceptional punishment). In 1998, 112 convicts were sentenced to exceptional punishment (1.5 per cent of the total convicted of crimes for which the then current Russian Criminal Code permitted the death penalty as exceptional punishment). In 1999, the courts sentenced nine convicts to death (0.1 per cent of the total convicted of crimes for which the Russian Criminal Code now in effect permits the death penalty as exceptional punishment). No one was sentenced to capital punishment in 2000. In the light of reviews of sentence in cassation and judicial supervision proceedings, acts of clemency and the Constitutional Court order mentioned earlier, not one of the death sentences passed since 1997 has been carried out.

Ibid, para. 44.

[65] UK Home Office, Immigration and Nationality Directorate, the Country Information and Policy Unit, Russian Federation, April 2003, [Internet]

[66] United Nations, Committee Against Torture, Conclusions and recommendations of the Committee against Torture: Russian Federation, 6 June 2002, CAT/C/CR/28/4, [Internet]

custody during the hours immediately after arrest, before they were charged. The victims come from all walks of life, but members of ethnic minorities and the poor were allegedly most at risk.[67]

44. Also in May 2002, the RF Ombudsman made a proposal to amend the RF Criminal Code in order to define the crime of torture (already punishable under Article 117 of the RF Criminal Code).[68] The corresponding amendments were approved by the Russian State Duma in the first reading on 19 March 2003. On 8 December 2003, the President of the Russian Federation signed a Federal Law on amendments to the RF Criminal Code. Under amended Article 117 of the RF Criminal Code, torture is defined as "infliction of physical or moral harm to force a person to give testimonies or to undertake other actions against the will of that person, as well as for the purpose of punishment, or any other purpose".

45. The UN Committee Against Torture (CAT) also expressed its concern about the lack of adequate access for persons deprived of liberty, immediately after they are apprehended, to counsel, doctor, and family members, an all-important safeguard against torture; the *de facto* refusal of judges to take account of evidence of torture and ill-treatment provided by the accused, resulting in the common failure to either investigate or prosecute such cases; the insufficient level of independence and effectiveness of the Prosecutor's Office, due, as recognized by the Russian Federation, to the problems posed by the dual responsibility of the Prosecutor's Office for prosecution and oversight of the proper conduct of investigations.[69]

46. The report of the Russian Federation to the CAT states

> The criminal prosecution of persons who commit offences such as those indicated in article 4 of the Convention is conducted in strict accordance with the rules of the law of criminal procedure. Such persons may be held in pre-trial detention only on the basis of the requirements of article 96 of the RSFSR Code of Criminal Procedure. When authorizing pre-trial detention, the Procurator must acquaint himself thoroughly with all the records of a case and, if necessary, personally interview the suspect or the accused. The prolongation of pre-trial detention beyond the statutory limit is permitted only when it is not possible to complete the investigation and when there are no grounds for modifying the preventive measure. Upon expiry of the statutory limit for pre-trial detention (i.e. six months in criminal cases if it is not possible to complete the investigation and when the individual concerned has committed a serious or particularly serious offence; or, exceptionally, one year if authorized by the Deputy Procurator-General or 18 months if authorized by the Procurator-General), the suspect or the accused must be released from the place of

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[67] Amnesty International Report 2003, Russian Federation, covering the period from January 2002 to December 2002, [Internet]
[68] Proposal related to the Draft Report of the Russian Federation "On Measures and Achievements towards Observance of the Rights foreseen by the International Covenant on Civil and Political Rights", of 13 May 2002.
[69] United Nations, Committee Against Torture, Conclusions and recommendations of the Committee against Torture: Russian Federation, 6 June 2002, CAT/C/CR/28/4, [Internet]

detention as stipulated in article 97 of the RSFSR Code of Criminal Procedure.[70]

The report of the Russian Federation to the Human Rights Committee on the CCPR states

> The rights of suspects and accused persons are considerably more extensive than under the RSFSR Code of Criminal Procedure previously in effect. Suspects are now entitled to defence from the moment of their actual detention. They and accused persons are entitled to confidential interviews with defence counsel before their first interrogation, can lodge complaints about the actions (failure to act) of an investigator, inquiry agent, procurator or court, and take part in the court's consideration of them. The new Code clearly defines the procedure for detention of a suspect and observance of his rights. Once a suspect has been handed over to the body conducting an initial inquiry or to an investigator or procurator, an official record of his detention containing an explanation of his rights must be produced within three hours. The suspect's relatives must be notified of his detention within 12 hours. The Code devotes particular attention to the choice of preventive measures. By comparison with the previous legislation these are slightly modified, and more have been added to the list. They include written undertakings not to leave the vicinity; personal recognizance; supervision by the command of a military unit; surveillance of minor suspects or accused persons; bail; house arrest; and detention in custody. Bail as a preventive measure may be employed in connection with crimes in any category, but consideration is given to the nature of the offence, the personality of the suspect or accused and the material circumstances of the individual standing bail. As of 1 January 2004, only a court will be able to order house arrest and detention in custody. Until then the decision to impose either will remain with the procurator, but the right of appeal to the courts against the legitimacy of and grounds for his decision will be retained.[71]

47. Conditions in police detention centers are reportedly difficult. According to the US State Department report for 2003

> Conditions in police station detention centers varied considerably but generally were harsh; however, average periods of stay in such facilities decreased, and overcrowding was greatly alleviated. Implementation in July 2002 of the new Criminal Procedures Code and the overall reduction in the use of pretrial detention for petty criminals reduced both the numbers of persons being held and the length of time they may be held in pretrial detention. Since 2000, the pretrial population has declined by approximately 46 percent, virtually eliminating the problem of overcrowding in those institutions.

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[70] Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Third periodic reports due in 1996, Addendum, Russian Federation, CAT/C/34/Add.15, 5 December 2001.
[71] Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Fifth periodic report, Russian Federation, CCPR/C/RUS/2002/5, 17 September 2002, para. 65.

Despite these improvements, conditions in SIZOs, where suspects were confined while awaiting the completion of a criminal investigation, trial, sentencing, or appeal, remained extremely harsh, and posed a serious threat to health and life. Health, nutrition, and sanitation standards remained low due to a lack of funding. Head lice, scabies, and various skin diseases were prevalent. Prisoners and detainees typically relied on families to provide them with extra food. Poor ventilation was thought to contribute to cardiac problems and lowered resistance to disease.

Because of substandard pretrial detention conditions, defendants at times claimed that they had confessed simply to be moved to comparatively less harsh prison conditions. Defendants' retractions of confessions made under these conditions generally were ignored, as were those who attempted to retract confessions they claimed they were coerced to make.[72]

d) Allegations of Espionage

48. Several journalists and scientists remained in custody, charged by the Federal Security Service (FSB) with espionage. The charges were based on secret regulations and related to work the accused had done using open sources.[73] Human Rights Watch said in a briefing paper on 27 October 2003 that Russia should immediately release Igor Sutiagin, an arms researcher jailed on espionage charges and imprisoned by Russia's Federal Security Service. The paper furthermore called on the Russian Government to take steps to strip the FSB of its powers to conduct criminal investigations and to run detention centers..Such reforms were among the commitments undertaken by Russia when it joined the Council of Europe.[74]

e) Citizenship and Statelessness

49. A petition with more than 16,000 signatures collected by Amnesty International's worldwide membership was delivered on 13 October 2003 to the Administration of President Putin. The petition – designed as a symbolic passport – urged President Putin to address the plight of hundreds of thousands of former Soviet citizens in the Russian Federation who are being denied their legal right to obtain Russian citizenship and/or permanent residency rights. "When former Soviet passports expire on 31 December 2003, these people will be left stateless and may face the threat of deportation", Amnesty International stated.[75] In this context, it should be noted that the replacement of USSR internal passports by RF internal passports is not expected to create new situations of statelessness, to the extent that one's citizenship does not depend upon the validity of one's ID. However, 1) it may create difficult situations for Russian citizens who are not yet in possession of RF

[72] US Department of State - Original title: "Country Reports on Human Rights Practices – 2003. See also United Nations, Committee Against Torture, Conclusions and recommendations of the Committee against Torture: Russian Federation, 6 June 2002, CAT/C/CR/28/4, [Internet]
[73] Human Rights Watch World Report 2003 – Russian Federation, 14 January 2003, [Internet]
[74] Human Rights Watch, News Release, "Russia: Pre-trial Detention Excessive in Espionage Case", 27 October 2003, [Internet]
[75] Amnesty International, News Release, "Russian Federation: Amnesty International Delivers Petitions to President Vladimir Putin", 13 October 2003, [Internet]

internal passports after 30 June 2004[76], and 2) it will make it more difficult for (already) stateless persons holding such documents to fulfill the conditions necessary to acquire Russian citizenship.

f) Elections

50. Although elections take place at regular intervals and widespread fraud is not the norm, some manipulation and irregularities reportedly occur, especially in the provinces.[77] Regarding the latest nation-wide elections of the State Duma held on 7 December 2003, the OSCE commented in its preliminary findings that the elections were free but not fair. According to the OSCE, the Central Election Commission (CEC), while professional on a technical level and functioning in an efficient, professional, and generally transparent manner, it was not always consistent in its pursuit of apparent violations, especially concerning complaints about the media.[78] The main problems observed by the international mission were widespread complaints concerning the use of administrative resources by the State apparatus on behalf of the pro-presidential United Russia party candidates.[79] On Election Day itself, international observers noted significant problems relating to the secrecy of the vote, with open voting in 30 per cent and group voting in 31 per cent of polling stations. In general, there seem to have been more problems during the counting of the votes than the voting procedures.[80] In its final report, the OSCE re-iterated its previous statement on the serious distortion of the election process and noted that, "while generally well-administered, the election failed to meet a number of OSCE commitments for democratic elections, most notably those pertaining to: unimpeded access to the media on a non-discriminatory basis, a clear separation between the State and political parties, and guarantees to enable political parties to compete on the basis of equal treatment".[81]

g) Women's Rights

51. Article 19 of the Constitution guarantees equality of rights and liberties "regardless of sex, race, nationality, language, origin, property and position, place of residence, attitude toward religion, convictions, membership in public associations, and other circumstances". However, domestic violence reportedly[82] remains commonplace and the police are usually hesitant to investigate such offences. Apart from being victims of violent crimes in their homes, women suffer sexual harassment in the workplace, where advertised positions sometimes can be conditional on the receptiveness to a sexual relationship, as well as specify physical appearances. There is no law that prohibits sexual harassment. In trying to avoid covering the entitled three-year maternity leave, employers prefer to hire men. When employees are made redundant, women are more likely to be fired than men. Consequently,

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[76] The deadline for the replacement of USSR internal passports by RF internal passports was extended to 30 June 2004, under RF Government Resolution No.35 of 23 January 2004.
[77] Freedom House, Nations in Transit 2003: Russia, [Internet]
[78] OSCE, International Election Observation Mission, Elections to the State Duma of the Russian Federation – 7 December 2003. Statement of Preliminary Findings and Conclusions, 8 December 2003, pp. 1 and 3.
[79] Ibid, p. 4.
[80] Ibid, p. 8.
[81] OSCE, Elections to the State Duma, 7 December 2003, Russian Federation, OSCE/ODIHR Final Report, 27 January 2004, p. 1.
[82] Amnesty International, Violence against women in the Russian Federation, www.amnesty.org/russia womens_day.html+domestic+violence+in+Russia&hl=en (accessed 30 April 2004).

unemployment among women is disproportionately high: officials estimate that 70 per cent of the unemployed are women. Moreover, women continue to earn less money than men for performing the same work. Meanwhile, the Government has been criticized by NGOs for failing to enforce employment rights concerning women.[83]

52. As recently as November 2003, the Russian Government was criticized for violating women's rights by the UN Committee on Economic, Social and Cultural Rights when considering Russia's implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).[84] The Committee recommended that Russia take effective measures to improve the working conditions for women and to ensure equal pay for work of equal value, as well as making sexual harassment in the workplace a criminal offence.[85] The Committee was concerned with the low representation of women in political life and encouraged the Russian Government to promote gender equality in politics.[86] In the last State Duma, before the December 2003 election, only eight per cent of the deputies were women. In its second interim report in the run up to the December 2003 elections, the OSCE noted the low participation of women in the elections. Women represented 11 per cent of candidates in single member district contests and 13 per cent of candidates in proportional party lists.[87] Reportedly, women political activists were seriously opposed by party leaders in putting forward women candidates or highlighting women's issues in party platforms. In addition, the OSCE reported that there were many denigrating comments during TV debates about women's involvement in politics, as well as overtly sexist imagery in campaign posters.[88] In its preliminary findings and conclusions, the OSCE confirmed that the participation of women in federal level politics is in decline, although they are better represented in local governments. Many of the women candidates in the December 2003 election were in parties that were unlikely to break the five per cent barrier to enter the Duma.[89]

h) Freedom of Religion

53. The Constitution provides for freedom of religion and the Government generally respects this right in practice for individuals. However, religious groups reported various sorts of harassment by the authorities. Critics continue to identify several aspects of the 1997 Law on the Freedom of Conscience and Religious Associations as problematic for religious freedom.[90] They criticize in particular the provision allowing the State to ban religious organizations and initiate liquidation procedures.[91] The law also outlines a difficult registration process and creates

[83] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 5.
[84] UN Committee on Economic, Social and Cultural Rights, Concluding Observations, Russian Federation, 28 November 2003, E/C.12/1/Add. 94.
[85] Ibid, para. 48.
[86] Ibid, paras. 14 and 42.
[87] OSCE/ODIHR Election Observation Mission, Russian Federation – Elections to the State Duma 2003, Interim Report 2 (10-25 November 2003), p. 5.
[88] Ibid,
[89] OSCE, International Election Observation Mission, Elections to the State Duma of the Russian Federation – 7 December 2003, Statement of Preliminary Findings and Conclusions, 8 December 2003, p. 7.
[90] The Federal Law on the Freedom of Conscience and Religious Associations of 26 September 1997 entered into force on 1 October 1997 and was amended in March 2000 and again in March and July 2002.
[91] U.S. Department of State, Annual Report on International Religious Freedom for 2002 – Russia, 7 October 2002, [Internet].

openings for state interference in the activities of religious groups. The re-registration of religious communities in the Russian Federation reportedly resulted in the loss of legal status for more than 2,000 congregations – of the 16,000 that were previously registered.[92] There were no reports of forced religious conversion.[93]

i) Racial Discrimination

54. The UN Committee on the Elimination of Racial Discrimination noted with concern the absence of a definition of racial discrimination in the domestic legislation. While laws may protect against discrimination without employing the actual term "discrimination", the Committee encouraged the Russian Federation to consider introducing into relevant laws an explicit prohibition of racial discrimination as defined in Article 1 of the International Convention on the Elimination of all Forms of Racial Discrimination. The Committee also welcomed Russia's ratification in 2001 of the Council of Europe Framework Convention for the Protection of National Minorities.[94]

55. Ethnically motivated violence by non-state actors in Russia's cities reportedly continues. The authorities reportedly did little in response to racist statements by public figures in Russia's regions and anti-Semitic publications were openly on sale.[95] The RF Ombudsman has expressed the opinion that Government authorities should do their utmost to sanction those organisations and individuals that promote racial or national hatred. [96]

56. The UN Committee on the Elimination of Racial Discrimination has expressed concern at reports of racially selective inspections and identity checks targeting members of specific minorities, including those from the Caucasus and Central Asia, and Roma. The Committee recommends that the State party take immediate steps to stop the practice of arbitrary identity checks by law-enforcement authorities. The Committee was also concerned about numerous reports that residence registration is used as a means of discriminating against certain ethnic groups, and that the lack of residence registration is used to deny a number of political, economic, and social rights.[97]

57. According to its report to the CCPR, the main aim of Russian Federation policy towards ethnic, religious, and linguistic minorities is to enable all Russian citizens to exercise to the full their right to social and ethnic-cultural development and to bring about social integration. This aim is reflected in the Outline of State Ethnic Policy approved by Presidential decree on 15 June 1996. The Outline lays down the following main principles of State policy on ethnic issues:

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[92] Freedom House, Nations in Transit 2003: Russia, [Internet]
[93] U.S. Department of State Annual Report on International Religious Freedom for 2002 – Russia, 7 October 2002, [Internet]
[94] United Nations, Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination: Russian Federation, 21 March 2003, CERD/C/62/CO/7, [Internet]
[95] Amnesty International Report 2003, Russian Federation, covering the period from January 2002 to December 2002, [Internet]
[96] Declaration "Not to Allow Racial, National and Religious Intolerance in Russia" , 19 April 2002.
[97] United Nations, Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination: Russian Federation, 21 March 2003, CERD/C/62/CO/7, [Internet]

- Equality of human and civil rights and liberties irrespective of race, nationality, language, attitude towards religion, or membership of social groups or voluntary associations;
- Prohibition of any restrictions on civil rights based on membership of a social, racial, ethnic, linguistic or religious group;
- Preservation of the historical integrity of the Russian Federation;
- Equality of all constituent entities of the Russian Federation in their relations with the federal State authorities;
- A guarantee of the rights of numerically small indigenous peoples in accordance with the Russian Constitution, the standards of international law and international treaties to which the Russian Federation is a party;
- The right of every citizen to determine and indicate his ethnic background without coercion of any kind;
- Support for the development of the ethnic cultures and languages of the peoples of the Russian Federation;
- Prompt and peaceful settlement of disputes and conflicts;
- A ban on activities intended to undermine State security or inflame social, racial, ethnic, or religious differences, hatred, or enmity.[98]

j) Freedom of Movement

58. The Russian Constitution states in Article 27

> (1) Everyone who is lawfully staying on the territory of Russian Federation shall have the right to freedom of movement and to choose the place to stay and reside.
>
> (2) Everyone shall be free to leave the boundaries of the Russian Federation. The citizens of the Russian Federation shall have the right to freely return into the Russian Federation.

59. The 1993 Federal Law "On the right of citizens of the Russian Federation to the freedom of movement, choice of place of stay and residence within the territory of the Russian Federation" further defines the modalities of exercising such rights through the system of "registration" at place of stay or place of (permanent) residence. The "registration" system, under this law, replaced the former USSR "propiska" regime, insofar that the registration is to be issued by the local bodies of interior upon simple *notification* by a citizen of his/her place of stay or place of residence, and is not any longer an *authorization* to be granted by the said bodies of interior to a citizen to stay or reside in a particular place, subject to pre-conditions being met.

60. However, in its 2002 Country Report on Human Rights, the U.S. Department of State reported that regional governments continued to restrict these rights through residential registration rules closely resembling the Soviet-era "propiska"

[98] Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Fifth periodic report, Russian Federation, CCPR/C/RUS/2002/5, 17 September 2002, para. 185.

regulations.[99] Local police authorities generally issue sojourn and/or residence registration.

61. To be granted a registration at the place of residence or place of sojourn, a person (including Russian citizens, former USSR citizens and foreigners) has to fulfill a number of conditions. These include, among other things, the presentation of an ID document, such as a (internal) passport, and a document that serves as a basis for legal residence, such as a certificate on inheritance or ownership, lease agreement or the owner's written consent for registration.[100] In many cases, however, individuals do not succeed in gathering such supporting documents. Property owners renting flats often refuse to conclude a formal lease agreement or to give a written consent for registration, in order to evade taxes. As a result, individuals lack the supporting documents for police registration. Without such registration, their access to civil, economic, and other rights can be hampered. While appeals to the courts have in some cases proved successful, the absence of legal awareness among the population and the long delays until a final court decision is taken, have limited the impact of any legal remedies.

62. Many regions of the Russian Federation have adopted their own legal acts on the registration of newly arriving people, some of which are in contradiction with the Federal Law "On freedom of movement". Such regional acts used to contain different restrictions to, or requirements for, registration, such as the limitation of the period of registration, the presence of close relatives legally residing in the region, the payment of fees, the availability of a minimal amount of square meters per person, and others. Through a number of interventions by the Constitutional Court as well as lower courts, such requirements were found to be abusive interpretations of the federal law and were declared unconstitutional. However, in spite of these positive developments, little is said to have changed at a practical level. Difficulties in obtaining registration are, in general, connected with arbitrary practices: the local regulations themselves may be in accordance with the federal legislation. The limited awareness by the population of their rights and the often restrictive approach of the local interior organs prevents legislative reforms from having a significant impact in practice, often in spite of the good will by the Government. Moreover, in some regions (for instance Krasnodar), regional legal acts contradicting the federal law remain in force.[101]

63. Despite the provisions of the Law "On freedom of movement", the lack of registration leads in practice to the deprivation of most civil, social, and economic rights. People are not admitted to public services, such as free medical services, education, pensions, child support, and unemployment allowances, etc., unless they are registered at their place of sojourn or residence. Moreover, employers are required to hire only individuals holding a registration at the place of sojourn or

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[99] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 2.d.

[100] As per the Federal Law "On the right of citizens of the Russian Federation to the freedom of movement, choice of place of stay and residence within the territory of the Russian Federation", of June 1993 and the Order No. 393 of the Ministry of Interior of the Russian Federation "On the Approval of the Instruction on the application of the rules of registration and de-registration of citizens of the Russian Federation at their places of residence or stay within the Russian Federation", of 23 October 1995.

[101] See also U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 2.d.

residence. In regions where "passport control measures" are strictly implemented, such as, for instance, Moscow, St. Petersburg, and Southern Russia, people without a registration can be subject to constant harassment by the police during document checks in the streets and at homes. The Code on Administrative Offences provides for a fine of 100 roubles for a violation of the registration rules by Russian citizens. For foreigners, the fine ranges from 500 to 1,000 roubles, with or without an expulsion order.

64. Citizens of the Russian Federation are holders of two types of passports. One is for internal use and the other is for travel abroad. For travel outside the territory of the Russian Federation, a Russian citizen obtains a "passport for travel abroad" according to the Federal Law "On Procedures of exit and entry from/to the Russian Federation" from 1996, as amended in 1998, 1999 and 2003.[102]

65. The "passport for travel abroad" is issued either by the territorial branch of the Ministry of Internal Affairs (MOI) or by the Ministry of Foreign Affairs. Outside the country, a passport is issued or renewed by a Russian Embassy or Consulate. In most cases, Russian citizens obtain passports for foreign travel through territorial branches of the MOI. Under the aforementioned federal law and under the MOI Instruction "On Procedure of Issuance of Passports to Russian Citizens for Exit from and Entry to the RF",[103] "passports for travel abroad" are issued by the MOI territorial branch at the place of the person's residence or at the place of sojourn. Following a 2003 administrative reform affecting law enforcement ministries and services, the Federal Border Guards Service came under the responsibility of the Federal Security Service (FSB). The identity of foreigners and RF citizens alike is subject to verification against a central database by border guards at international border crossing points.

66. The right to exit the Russian Federation can be temporary restricted for certain categories of citizens. This concerns individuals who have had access to state secrets (as defined by the Federal Law "On state secrets" from 1993, as amended in 1997). The Commission on Protection of State Secrets can restrict exit of the Russian Federation for such persons for a period of five years. This period can be extended for up to five years, not exceeding ten years total. The Commission's decision can be appealed to court.

67. According to the above mentioned federal law, the restriction for exiting the Russian Federation also applies to those drafted to the military service (until its completion), individuals arrested on charges of commission of a crime or accused of a particular crime (until there is a decision on the case or a final court judgment), individuals convicted of a crime (until having served the sentence), individuals avoiding fulfillment of obligations imposed upon them by a court, and individuals who knowingly provided false information while applying for a "passport for travel abroad".

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[102] The term "passport" is to be understood, in the context of this law, as "passport of citizen of the Russian Federation for exit from the RF and entry in the RF", as opposed to the "internal passport" or identity document of the citizen of the Russian Federation.

[103] Adopted by the MOI Order No. 310 on 26 May 1997 and amended on 30 June 1998 by MOI Order No. 394 and on 07 April 2000 by MOI Order No. 360.

68. Possession of an ID ("internal passport")[104] is mandatory for all RF citizens aged 14 and above: Non-possession of a valid ID is an administrative offence punishable by a fine. As opposed to passports to travel abroad, "internal passports" can only be issued by the organs of the Ministry of Interior, on the territory of the Russian Federation.[105] All RF citizens shall be registered by the local bodies of the Ministry of Interior at their place of residence and, in case of sojourn elsewhere in Russia, at their place of sojourn. Residence registration is stamped onto the (internal) passport.

69. The gradual replacement of the (1974-type) USSR passports by RF passports ("internal passports") by 31 June 2004 is provided for under the RF Government Resolution No. 828 of 8 July 1997 (as amended by RF Government Resolution No.35 of 23 January 2004). The Resolution regulates the modalities of issuance, renewal, and replacement of internal passports. If not by law, certainly in practice, the access by RF citizens to their rights and entitlements, including social benefits and allowances (pension, unemployment benefits, child allowances, etc.) is closely linked to the possession of valid residence/sojourn registration. Hence, it remains to be seen whether persons with residence registration (so-called "permanent registration") in their USSR passports will encounter difficulties, after 30 June 2004, in the exercise of their citizens' rights at their place of residence.[106] More problematic may be the situation of persons holding USSR passports who wish to register their sojourn in another subject (region) of the Russian Federation after 30 June 2004, as well as the situation of persons who wish to change their place of residence while holding a USSR passport.

70. The question of whether USSR passports held by RF citizens will be considered (after 30 June 2004), in practice, as valid IDs, shall not affect the citizenship of their holder. They remain RF citizens. What is at stake under Resolution No. 828 is only the replacement of IDs (internal passports) for persons who already are Russian citizens. Before new RF passports were designed and issued to RF citizens, the actual citizenship of the citizens of the Russian Federation was established through "stickers" ("вкладыш") inserted onto their USSR passports as an indication of their Russian citizenship. To the extent that one's citizenship is not dependant upon the validity of his/her ID, the validity (non-validity) of USSR passports, as identity documents, is not expected to create situations of statelessness. However, a restrictive interpretation by RF law enforcement authorities of Resolution No. 828, would complicate the establishment of RF citizenship by certain categories of RF citizens (but who are de facto stateless) holding USSR passports.

71. The RF Ombudsman reported that his office received complaints from former USSR citizens who had acquired Russian citizenship through Russian diplomatic representations in various countries of the CIS, but who encountered difficulties in Russia replacing their USSR passports replaced by Russian Federation passports.

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[104] The official term for "internal passport" is "passport of the citizen of the Russian Federation".

[105] Order No. 347 of the RF Ministry of Interior of 24 May 2003 further facilitates the modalities of issuance of RF passports for those citizens who do not live at their place of residence or sojourn registration by envisaging the possibility to issue RF passports at the place of "factual residence" in the Russian Federation.

[106] It could be speculated that they may face obstacles with the enjoyment of newly acquired entitlements: for instance, persons reaching the pension age after 30 June 2004 may have difficulties effecting the necessary demarches for the payment of their pension if their residence registration is stamped onto their USSR passport.

The problem seems to lie in part with instances of forgery, uncovered by organs of the Ministry of Interior, of citizenship "stickers". Lacking valid evidence of Russian citizenship, the concerned persons reported problems in accessing medical care, receiving pensions and obtaining residence registration.[107]

72. The Soviet-era 1974 passports also indicated the holder's ethnicity. However, the new internal passports, which started being issued in the late 1990s, no longer state the person's ethnicity.

B. Information on Main Asylum Groups

1. Selected Ethnic Minorities

73. Of the Russian population of 145.2 million, the majority are ethnic Russians, who speak Russian and follow Eastern Orthodox Christianity. There are, however, a number of ethnic, linguistic, and religious minorities. After ethnic Russians with 80 per cent, the Tartars are the next largest ethnic group representing 4 per cent of the population; 3 per cent of the population are Ukrainians and 11 per cent belong to other ethnic groups.[108] According to the national census of 2002, Russia has 160 ethnic groups. When compared with the last census undertaken 14 years ago, Russia today has more residents of Armenian, Azeri and Tajik origin, but fewer Ukrainians, Jews and Germans.[109]

74. According to the report submitted by the Russian Federation to the Committee on the Elimination of all Forms of Racial Discrimination

> The prohibition of racial discrimination is one of the staple provisions of the 1993 Constitution of the Russian Federation. This constitutional provision is fully consistent with Russia's international obligations.[110]

75. Article 19 of the Russian Constitution reads

> 1. Everyone shall be equal before the law and the courts
>
> 2. The State shall guarantee equality of rights and freedoms regardless of sex, race, nationality, language, origin, material or official status, place of residence, attitude to religion, convictions, membership of voluntary associations or other circumstances. All limitations of human rights on social, racial, national, linguistic, or religious grounds shall be prohibited.[111]

76. Article 282 of the Russian Criminal Code stipulates that efforts to arouse hatred based on nationality, racial or religious grounds, to demean national dignity, or to propagate the exclusivity, superiority or inferiority of citizens on the basis of their

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[107] Application "For the Protection of the Rights of Persons, Citizens of the USSR, who obtained Citizenship of the Russian Federation through Diplomatic Missions in Member-countries of the CIS", 10 October 2002.
[108] Freedom House, Countries in Transit 2003: Russia, p. 498.
[109] Figures taken from: WPS – Russian Political Monitor, "Vladimir Zorin on Immigration and Ethnic Minorities", 21 November 2003. According to the main results of the census published by the RF authorities, there are nowadays 20 per cent Tatars, ten per cent Ukrainian, six per cent Bashkiri and Tshuvashiri and five per cent Chechen; see: www.gks.ru/PEREPIS/perep2.htm (accessed in December 2003).
[110] Report Submitted by the Russian Federation under Article 9 of the Convention, Addendum, CERC/C/431/Add.2, 29 July 2002, para. 3.
[111] Ibid, para. 4. This document provides a thorough and detailed description of anti-discrimination mechanisms fixed by Russian law, and measures taken by the authorities to address this issue.

attitude to religion, nationality or race shall, if committed in public or through the mass media, incur criminal liability.[112] In addition to article 282,

> the Russian Criminal Code also makes it a criminal offence to violate the equal rights of citizens in connection with sex, race, nationality, language, origin, material or official status, place of residence, attitude to religion, convictions or membership of voluntary organizations, causing damage to their rights and legitimate interests (Criminal Code, art. 136); and also to commit genocide, i.e. actions committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, by means of killing members of the group; causing serious harm to their health; forcible prevention of births; coercive transfer of children; or forcible resettlement or other infliction of conditions of life calculated to bring about the group's physical destruction (Criminal Code, art. 357).[113]

77. According to the Minority Rights Group, inter-ethnic tensions in Russia have been exacerbated since the collapse of the Soviet Union.[114] *Perestroika* facilitated the revival of nationalist and independence movements within autonomous regions, which in turn led to an increase in the ethnic struggles within these regions and an increase in tensions between the central and regional governments.[115] Inter-ethnic tension emerged particularly in the Northern Caucasus and in some areas of Siberia. In 1991, violence erupted in the Republic of Tuva, related to the higher standard of living enjoyed by Russians living in the republic compared to the Tuvans. Due to the inter-ethnic conflicts, a large part of the ethnic Russian population residing in rural areas of Tuva was forced to leave for neighboring regions.[116] At various instances, tensions were also reported from the Northern Caucasus republics of Kabardino-Balkaria, Karachaevo-Cherkessia, and Dagestan.

78. In 1992, a conflict erupted in North Ossetia-Alania in the North Caucasus between ethnic Ossets and Ingush, over the control over the Prigorodny district. Because of the conflict, almost the entire Ingush population of North Ossetia (approx. 35,000) people fled to Ingushetia. At the same time, the small ethnic Osset population from Ingushetia had to find refuge in North Ossetia. A considerable part of these persons continue to remain displaced today, as security conditions do not yet allow for their return to several villages. In Chechnya, the struggle for independence from the Russian Federation and the subsequent armed conflicts led to the departure of over 400,000 Russian-speakers (ethnic Russians, Ukrainians, Armenians, Jews, Germans, etc.) from Chechnya, leaving behind mostly ethnic Chechens and Ingush.

79. A number of human rights groups commented on the rise of nationalism in the Russian Federation resulting in increased in violence against minority groups. The Commissioner of the Russian Federation on Human Rights reported that Roma and persons with so-called Caucasian features, including Chechens and persons from Central Asia and Africa, face widespread governmental and societal discrimination,

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[112] Ibid, para. 65.
[113] Ibid, para. 69.
[114] Minority Rights Group, the World Directory of Minorities, London: 1997, p. 295.
[115] Ibid.
[116] Ibid, p. 300.

often reflected in official attitudes and actions.[117] Police reportedly harass and extort bribes from persons with dark skin or who appear to be from the Caucasus. In addition, the police targeted such persons for deportation from urban centers. For example, in autumn 2001, more than 100 Roma were reportedly expelled forcibly from Krasnodar Krai to Voronezh.[118] In Moscow, persons with dark skin are subjected more frequently than others to document checks, frequently being detained, or fined in "amounts in excess of permissible penalties".[119] In 2002, several embassies and diplomatic representations undertook a demarche to the RF Ministry of Foreign Affairs to voice their concern over repeated instances of physical assaults perpetrated against their citizens in Russia, primarily in Moscow. Headed by the Swedish Ambassador, 37 embassies appealed to the RF Ministry of Foreign Affairs and called for more security for their staff as well as for citizens of their respective countries sojourning in the Russian Federation.

80. Members of ethnic minorities face physical attacks by non-state actors. The assaults are generally random and carried out by private individuals, mainly "skin-heads", neo-nazis, and other extremist groups inspired by racial hatred. The RF Ombudsman pointed at the unavoidable responsibility of the authorities, not only in repressing, but also in preventing racially motivated crimes, by suggesting that in some regions (e.g. Krasnodar Krai), the activities of the authorities may create a favorable ground for the perpetration of racist incidents against non-Slavic looking migrants.[120] The Russian Ministry of Interior estimates that there are about 15-20,000 "skinheads" active around Russia.[121] The U.S. State Department reported that some of these attackers are known to local police for their racial intolerance and criminal records.[122] Victims, in particular migrants and asylum-seekers lacking sojourn registration documents, may chose not to report such attacks, for fear of being sanctioned for illegal stay in Russia.[123] Criminal investigations on racially motivated attacks are not systematically initiated by the police. As a matter of practice, the police tend to consider such violent acts as an "intentional infliction of light injury" (Article 115 of the Russian Criminal Code) or as battery (Article 116 of the Code). The criminal investigation on the murder of an Angolan asylum-seeker in September 2001 (Massa Mayoni), assaulted and beaten to death near the UNHCR Moscow Refugee Reception Centre, was concluded in 2002. The police qualified the case as hooliganism, but not murder. This is disputed by the widow. An expert opinion requested by the complainant stated that injuries inflicted by a blunt object were the cause of death, rather than the victim falling to the ground (as was asserted by a previous expert). Currently, the complainant's lawyer is attempting to obtain a review of the indictment and change the qualification of this crime to intentional murder.

81. In summer 2002, the Russian Parliament passed new legislation on combating extremism (Federal Law No. 114-FZ on the Counteraction against Extremist Activity, of 25 July 2002). The adoption of this law is a positive development in the

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[117] Report of the Commissioner of the Russian Federation on Human Rights for 2002 [Internet]
[118] Minority Rights Group, The World Directory of Minorities, London, 1997, p. 295.
[119] Ibid.
[120] Declaration "Not to Allow Racial, National and Religious Intolerance in Russia", 19 April 2002.
[121] Agence France-Presse, "North Korean stabbed to death in centre of Saint Petersburg", 15 December 2003.
[122] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 5.
[123] Ibid, See also Amnesty International, Annual Report 2003: Russian Federation, 2003.

fight against, and prevention of, racist violence to the extent that it explicitly condemns "the excitation of racial, national, or religious strife and also social hatred associated with violence or calls for violence". At the same time, the law was criticised by a number of human rights activists and opposition politicians, who were of the opinion that the definition of "extremism", under Article 1 of the law, was too broad and could be used to curtail the activities of human rights organisations and the media.[124]

82. According to the 2002 report submitted by the Russian Federation to CERD,

> The Ministry for Federation Affairs and Nationalities and Migration Policy of the Russian Federation receives a small number of nonetheless very worrying reports of nationality-motivated discrimination from individual citizens. These complaints often concern the actions of local law enforcement officers and certain administration officials who, in the opinion of the persons filing the reports, are exceeding their authority, applying sanctions and opening criminal cases based not on the gravity of a particular misdemeanour, offence or action, but because a person belongs to a particular "non-indigenous" nationality. More often than not, this category includes people from the north Caucasus and the Transcaucasian republics. In following up these complaints, the Ministry approaches the relevant federal bodies or government authorities of the constituent entities of the Russian Federation and undertakes fact-finding missions to address problems that have arisen.[125]

83. According to the same report,

> The introduction of the new Russian Criminal Code on 1 January 1997 has afforded stronger legal grounds for countering various forms of racial discrimination, including fascism and other forms of political extremism. The Code does not, however, provide set legal definitions of "fascism" or "political extremism", which means it is impossible to assign wrongdoing of an extremist nature to a particular category of offence properly. The absence of definitions is also a hindrance to the application of Presidential Decree No. 310 of 23 March 1995 on measures to ensure the coordination of action by State bodies to combat manifestations of fascism and other forms of political extremism in the Russian Federation. Confirmation of this can be found in a summary by the Russian Procurator-General of practice in the enforcement of criminal legislation against fascism and political extremism, which shows that prosecutors and investigators have difficulty in determining the underlying intent of published texts, films, photographic, audio and video material. They thus make mistakes when commissioning and

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[124] International Helsinki Federation for Human Rights, "Human Rights in the OSCE Region: Europe, Central Asia and Northern America", Report 2003 (Events of 2002), chapter on Russia, www.ihf-hr.org/viewbinary/viewdocument.php?doc_id+928 (accessed in April 2004). See also: The Associated Press, "Group Urges Russia to Stop Extremists", 28 January 2003, www.orthodoxnews.netfirms.com/Group%20Urges%20Russia.htm (accessed in April 2004).

[125] Report Submitted by the Russian Federation under Article 9 of the Convention, Addendum, CERC/C/431/Add.2, 29 July 2002, para. 60.

interpreting expert findings and advisory opinions, and as a result, the cases do not get into court.[126]

84. The report concedes that some constituent entities of the Federation have discriminatory provisions in their constitutional instruments

> There are still clauses in the constitutions of the Adygeya Republic and the Republic of Ingushetia that are designed to restrict human and citizens' rights and freedoms. They provide that any candidate for the presidency of the Republic concerned must be proficient in Russian and the language of the eponymous nationality. Article 35, paragraph 1, of the Constitution of Ingushetia also provides that Russian and Ingush must be studied in the Republic's schools. Under article 26, paragraph 2, of the Constitution of the Russian Federation, everyone has the right to free choice of language of instruction. These points and other contradictions between national constitutions and federal legislation are presented in a report by the Procurator-General to the Russian Government which says that the Constitutional Court of the Russian Federation needs to check the basic laws and regulations of a number of northern Caucasian entities to ensure that they are in conformity with federal legislation.[127]

a) Meskhetians in Krasnodar

85. In 1944, the Meskhetians were subject to forced relocation from the Akhalsikhe Region of Georgia to Central Asia. After the anti-Turk pogroms in the Fergana valley in 1989, the Soviet authorities evacuated some 15,000 Meskhetians to Central Russia, while some 84,000 Meskhetians spontaneously fled Uzbekistan for the Russian Federation and Azerbaijan. Some 13-16,000 of them live in the Krasnodar Region. Among them, 11,000 persons live in compact settlements within the districts of Krymsk, Belorechensky, Abinsk, and Apsheronsk.

86. Evoking the historical rivalry between Russia and Turkey (the international border between these two countries goes along the Black Sea, where Russia controls Krasnodar Krai), the regional authorities in Krasnodar reportedly adopted a discriminatory approach vis-à-vis the Meskhetians, arguing that they were a population in transit (to Georgia and/or to Turkey) and effected barriers to their integration. Most significantly, the large majority of the Meskhetians were not issued registration at their new place of sojourn or residence in that region. Consequently, and based upon restrictive local regulations, they have not been able to apply for citizenship[128].Access to the citizenship procedure has been further hampered by the fact that Meskhetians are still holding permanent residence registration in Uzbekistan, which they have not been able to cancel. The local migration service has stressed that the laws on refugees and on forced migrants do not have a retroactive effect and are, therefore, not applicable to Meskhetians, since they arrived in Russia before 1993. As a result, Meskhetians in Krasnodar Krai find themselves in a *de facto* stateless situation and are considered as illegal migrants by the local authorities.

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[126] Ibid, paras. 80, 81.
[127] Ibid, para 98.
[128] See "The Situation and Legal Status of Meskhetians in the Russian Federation", by Alexander Ossipov, Moscow, January 2003; study commissioned by UNHCR.

87. It should also be noted in this context that in summer 2002, the Russian Parliament passed a new legislation on combating extremism (Federal Law No. 114-FZ on the Counteraction against Extremist Activity, of 25 July 2002). The adoption of this law is a positive development in the fight against, and prevention of, racist violence to the extent that it explicitly condemns "the excitation of racial, national or religious strife and also social hatred associated with violence or calls for violence". At the same time, the law was criticised by a number of human rights activists and opposition politicians, who were of the opinion that the definition of "extremism", under Article 1 of the law, was too broad and could be used to curtail the activities of human rights organisations and the media.[129]

88. While most Meskhetians who settled in the then RSFSR were recognized as Russian citizens, the majority of those who settled in Krasnodar Krai have, to date, yet to acquire Russian Federation citizenship. The central government is aware of the problem but has not managed to enforce compliance with statutory and judicial requirements.

89. In a speech held in March 2002, the Governor of Krasnodar Krai, Aleksandr Tkachev, promised a group of regional and municipal officials that he would create "unbearable conditions" for "illegal migrants".[130] Furthermore, there are unconfirmed reports that the local government in Krasnodar Krai provided funding to paramilitary Cossack groups, some of which are said to be brutally repressive towards the Meskhetians living in that region.[131] The local authorities subjected the Meskhetians to special registration provisions, for instance the obligation to register as "guests" every 45 days. They further appeared to use economic measures to force the Meskhetians to leave Krasnodar, e.g. by prohibiting them from leasing land and canceling existing leases in 2001 and 2002, or by imposing prohibitions on employment or commercial activity in local markets.[132] The UN Committee on the Elimination of Racial Discrimination also voiced its concerns about consistent reports of the discrimination of Meskhetians residing in Krasnodar Krai, including arbitrary denial of residence registration and of formal recognition of citizenship.[133]

90. The Cossacks, of strong Orthodox faith, have a long history of constituting one of the most feared fighting forces. Their own survival was threatened after the Bolshevik revolution took place in Russia in 1917, being fiercely suppressed during the era of the Soviet Union. However, in the early 1990s, they started a quiet revival. Today, there are more than 600,000 Cossacks registered officially. Many live in the southern part of Russia, in Stavropol and Krasnodar Krai, near Chechnya. About 20,000 of them serve in the Russian military, but thousands more are members of loosely defined defense units and volunteer patrols.[134] The Russian

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[129] International Helsinki Federation for Human Rights, "Human Rights in the OSCE Region: Europe, Central Asia and Northern America", Report 2003 (Events of 2002), chapter on Russia, www.ihf-hr.org/viewbinary/viewdocument.php?doc_id=928 (accessed in April 2004). See also: The Associated Press, "Group Urges Russia to Stop Extremists", 28 January 2003, www.orthodoxnews.netfirms.com/Group%20Urges%20Russia.htm (accessed in April 2004).

[130] Izvestia, 19 March 2002 [Internet].

[131] Ibid.

[132] Ibid, section 2.d.

[133] UN Committee on the Elimination of Racial Discrimination, Concluding Observations on the Russian Federation, CERD/C/62/CO/7, 21 March 2003, para. 15.

[134] Daily Telegraph, "Russia calls on the Cossacks to ride again – this time in Ladas", by Tom Parfitt, 14 December 2003.

authorities have recently announced their intention to pass new legislation to strengthen the Cossack's security role, planned to go through the State Duma by autumn 2004.[135] Already in the last parliamentary elections held on 7 December 2003, over 3,000 Cossacks were recruited by the Ministry of Interior to help maintain security during elections in Stavropol, patrolling streets, polling booths, and railway stations. In addition, the Cossacks organize themselves in local security or paramilitary units, with a variety of tasks. In Stavropol, there exists a Cossack Cadet School with 600 pupils, including nearly 200 girls, between 11 and 17 years of age. The Cossacks are said to have hostile feelings towards certain ethnic minority groups, sometimes resulting in harassment, including violence, against members of such groups. For example, during the first international Cossack congress held in Novocherkassk in summer 2003, one Cossack leader ("ataman") branded immigrants in southern Russia "weeds and locusts", saying it was necessary "to jump in and scare them a bit".[136]

b) "Baku Armenians" in Moscow

91. Ethnic Armenians from Azerbaijan (so-called "Baku Armenians") were one of the first groups of internally displaced persons in the former USSR. Because of inter-ethnic conflict in Sumgait and Baku in 1989 and 1990, most ethnic Armenians left Azerbaijan either spontaneously or were evacuated by the Soviet authorities. Some of them moved to various regions of Russia. Among them, there was a group of ethnic Armenians evacuated in January 1990 by air from Baku to Moscow where the Moscow City Government accommodated them in various hostels and dormitories.

92. Permanent accommodation was identified for the Baku Armenians outside Moscow City, by the Federal Migration Service (after its creation in 1992), in consultation with some of the regions of the Federation. Those Baku Armenians who left for these locations eventually obtained residence registration and integrated locally. However, some Baku Armenians have opted to remain in temporary accommodation hostels in Moscow City. The Baku Armenians who remain in Moscow City and who have not managed to move to privately rented flats remain in a precarious situation, since they are only in possession of sojourn registration. The reason for staying in Moscow City is that some of them, after several years, have established a new life in this town or are too old to move (after having been displaced once). In addition, pension allowances are reportedly higher in Moscow City and medical care of higher quality than in the regions.

93. In 1991, in the absence of refugee legislation, a first registration of these IDPs was conducted and they were provided with a certificate indicating that they were forcibly displaced from Azerbaijan. Many of them still hold this registration card. However, in October 2000, an instruction was issued stating that these documents would only remain valid until 31 December 2001, after which date they would have to go through the existing national refugee status determination procedure. Only few of these Baku Armenians applied formally for refugee status (and were eventually rejected). The majority of them refused to do so, considering themselves as Russian citizens, in accordance with the 1991 Law on Citizenship. Their situation today remains fragile because the formerly state-owned hostels where

[135] Ibid.
[136] Ibid.

many still reside are being privatized. Since 2002, several eviction orders were served in such cases.[137] Under a UNHCR-initiated project, over the last two years, some 150 "Baku Armenians" were recognized as Russian citizens through the courts. While citizenship of the Russian Federation is a way towards local integration for this group, the mere fact of acquisition and/or recognition of Russian citizenship does not, as such, entail local integration, unless the concerned persons further obtain residence registration, which is hardly possible since they are living in temporary accommodation places.

94. Parallel to UNHCR's efforts to pursue local integration of these persons through recognition of their RF citizenship, the US Government in 2002 initiated a resettlement programme for this group.

2. Religious Minorities

95. Article 28 of the Constitution of the Russian Federation states that everyone is guaranteed

> the right to freedom of conscience, to freedom of religious worship, including the right to profess, individually or jointly with others, any religion, or to profess no religion, to freely choose, possess or disseminate religious or other beliefs, and to act in conformity with them.[138]

It also establishes the Russian Federation as "a secular state", meaning, "[n]o religion may be instituted as state-sponsored or mandatory religion".[139]

96. There are no reliable statistics that break down the population by religious denomination.[140] Available information suggests, however, that slightly more than half of all citizens consider themselves Russian Orthodox Christians. Muslims form the largest religious minority, with some 12-20 million. Some estimate that Protestants constitute the third largest religious group in Russia, with about two million. Following large-scale emigration over the past two decades, Jews are estimated to number between 600,000 to one million (0.5 per cent of the total population), with 80 per cent of the Jewish community residing in Moscow or St. Petersburg. Roman Catholics are similar in size with estimates of about 600,000 persons.[141]

97. In October 1997, the Russian Government enacted a Law on Freedom of Conscience and Religious Associations, which called for the (re-)registration of religious groups and only "those religious groups able to prove they had been established in the Russian Federation for a minimum of 15 years" can be officially registered. Organizations that could not comply with the 15-year rule were required

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[137] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 2.d.
[138] Article 14(1) of the Constitution of the Russian Federation.
[139] Ibid.
[140] U.S. Department of State, Russia: International Religious Freedom Report 2002, 7 October 2002, section I.
[141] Ibid. See also: U.S. Commission on International Religious Freedom, Report on the Russian Federation, May 2003, pp. 3-4.

to register annually for the following 15 years before being allowed to publish literature, hold public services, or invite foreign preachers to Russia.[142]

98. According to the 2002 CCPR report by the Russian Federation

> Unlike the previous Freedom of Religion Act of the RSFSR (1990), the current federal Act enshrines a series of fundamentally new provisions. It substantially alters the procedure for the establishment of religious organizations and reduces the circle of individuals who can found and belong to a local religious organization. Only Russian citizens are entitled to found local religious organizations. Foreign citizens and stateless persons can now only be members of a religious organization, and for that they must be permanently resident in the Russian Federation. The Act stipulates that nothing in the law on freedom of conscience, freedom of belief and religious associations must be so construed as to diminish or impinge upon the related human and civil rights guaranteed by the Russian Constitution or stemming from international agreements to which the Russian Federation is a party. Under the law, foreign citizens and stateless persons legally within the Russian Federation have the same right to freedom of conscience and belief as citizens of the Russian Federation and may be held liable in accordance with federal law for breaches of the law on freedom of conscience, belief and religious associations.[143]

99. In 1997, some 16,000 religious organizations were registered with the Russian authorities. January 2001 figures from the Ministry of Justice for registered (or re-registered) religious organizations amounted to 20,215. Just over half of these belong to the Russian Orthodox Church, whereas approximately 15 per cent are Muslim. Jewish and Buddhist organizations each account for less than one per cent and Jehovah's Witnesses for 1.6 per cent. Roman Catholic groups represent almost 1.3 per cent. Further, an estimated 500 to several thousand Muslim organizations remain unregistered.[144] It can be assumed that the official registration with the RF authorities does not reflect the entire demography of religious believers, as an unknown number of religious groups have not succeeded in getting registration (or re-registration) for various reasons, such as legal restrictions, cumbersome administrative procedures, or intra-confessional disputes.[145] A large number of foreign missionaries are operating in the Russian Federation.

100. The law distinguishes between religious groups and religious organizations. Article 7 of the law defines a religious group as "any voluntary association of citizens set up with the objective of joint profession and dissemination of faith, carrying on its activities without registration with the State authorities and without acquisition of capacity of a legal entity". A religious organization, under Article 8 of the law, is defined as "a voluntary association of citizens of the Russian Federation, or other persons, residing permanently and legally in the territory of the

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[142] The Federal Law on the Freedom of Conscience and Religious Associations of 26 September 1997 entered into force on 1 October 1997 and was amended in March 2000 and again in March and July 2002.
[143] Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Fifth periodic report by the Russian Federation, Human Rights Committee, UN doc. CCPR/C/RUS/2002/5, 9 December 2002, para. 130.
[144] U.S. Department of State, Russia: International Religious Freedom Report 2002, 7 October 2002, section I.
[145] Ibid.

Russian Federation, set up for purposes of joint profession and dissemination of faith that has been duly registered as a legal entity". A religious "group" does not enjoy the same rights or privileges as an organization. For example, a group cannot open a bank account, own property, issue invitations to foreign guests, etc. An "organization", however, is recognized as a judicial person and enjoys tax exemptions. [146] The 1997 law further required all organizations previously registered with the authorities to re-register by 31 December 2000, or be subject to the legal process of "liquidation". By the said deadline, some 2,095 religious organizations were reportedly subjected to liquidation. According to the Ministry of Justice, most of the liquidated religious organizations were defunct. Persons affiliated with these religious entities and NGOs, on the other hand, reported that a number of the liquidated organizations were still active.[147] For example, in 2002, the Russian authorities tried to liquidate the Salvation Army for not re-registering. On 7 February 2002, the Constitutional Court ruled that the liquidation was not lawful because the Salvation Army had indeed made an active attempt to comply with the requirements of the 1997 law.[148]

101. Oleg Mironov, the former federal human rights ombudsman (until February 2004), has criticized the 1997 law publicly on many occasions and recommended modifications to bring it into line with international standards and the Russian Constitution. The ombudsman's office contains a department dealing with religious freedom questions, *inter alia*, by responding to complaints on infringements of religious freedom. In addition, some regions of the Russian Federation have their own, local human rights ombudsmen mandated to oversee religious freedoms. Activities of religious organizations and groups face restrictions because of contradictions between federal and local laws in some regions. Reportedly, there were isolated instances in which local officials detained persons engaged in the public discussion of their religious views. However, such instances were quickly resolved.[149] In general, human rights activists continue to criticize several aspects of the 1997 law, mainly the possibility for the State to ban religious groups and organizations, the re-registration requirement for religious organizations as well as the liquidation procedure.[150] The implementation of the 1997 law by federal authorities has been somewhat more liberal than by local authorities. Nonetheless, some noted that there is evidence that the Procurator General has encouraged local state prosecutors to challenge the (re-) registration of certain non-traditional religious organizations.[151] The implementation of the 1997 law is further said to vary widely in the regions, depending on the attitude of local officials. Problems encountered by religious organizations range from refusal of (re-) registration,

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[146] The Federal Law on the Freedom of Conscience and Religious Associations of 26 September 1997 entered into force on 1 October 1997 and was amended in March 2000 and again in March and July 2002.
[147] U.S. Department of State, Russia: International Religious Freedom Report 2002, 7 October 2002, section II.
[148] Definition of the Constitutional Court of the Russian Federation of 7 February 2002 on the complaint of religious group "Moscow Branch of the Salvation Army" [Internet]
[149] U.S. Department of State, Russia: International Religious Freedom Report 2002, 7 October 2002, section II.
[150] Under the law, a religious group can be banned by the state if deemed a threat to society. A ban entails the total prohibition of the activities of an entire religious community. Liquidation, on the other hand, entails only the loss of a group's juridical status.
[151] U.S. Department of State, Russia: International Religious Freedom Report 2002, 7 October 2002, section II.

difficulties accessing venues for religious observances, denial of visas for foreign religious workers, evictions, and issues of property restitution.[152]

102. As established in the Constitution, the Russian Federation is a secular state and all religious associations are equal before the law.[153] The U.S. Department of State reported that there have been indications of a closer relationship between the Russian Orthodox Church and the state since 1999.[154] The Russian Orthodox Church has concluded various agreements with government ministries on issues such as guidelines for public education, religious training for government employees and military personnel. Further, in certain cases, law enforcement and customs decisions appear to give the Russian Orthodox Church a preferred position.[155] The U.S. Commission on International Religious Freedom went as far as to say that, in effect, the pre-Soviet relationship between the Orthodox Church and the government has been somewhat restored by government restrictions placed on the activities of numerous minority religious groups in exchange for Church support of government policies.[156]

103. Since 1998, the Office of the Prosecutor in Moscow has been attempting to ban Jehovah's Witnesses as a threat to society. The first suit was initiated in 1998 but dismissed in February 2001. However, a re-trial was opened in October 2001 (and was still ongoing as of June 2002, the time of writing of the latest U.S. Department of State report on international religious freedom). Four expert studies were ordered in the trial, one of which delayed the court case for ten months. In December 2001, Jehovah's Witnesses submitted an application to the European Court for Human Rights in Strasbourg for violation of, *inter alia*, the principle of non-intervention of the State in the freedoms of religion and expression. In March 2002, the Council of Europe's Monitoring Committee noted the "length of the judicial examination in this case as an example of harassment against a religious minority" and further expressed that "after six years of criminal and legal proceedings, the trial should finally be halted".[157]

104. On 30 April 2002, the Scientology group based in Moscow successfully challenged a liquidation order by a Moscow court, based on the ruling of the Constitutional Court of 7 February 2002 adopted in a case involving the Salvation Army.[158] Local officials argued that the group had failed to re-register by the deadline established under the 1997 law and so had to be liquidated. According to Scientology, however, the local authorities prevented the group from registering, despite several attempts by the group. Reportedly, the group's centers in Dmitrograd, Khabarovsk, Izhevsk, as well as other locations, encounter difficulties to operate from the Russian authorities.[159]

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[152] Ibid. section III.
[153] Article 14 of the Constitution of the Russian Federation.
[154] U.S. Department of State, Russia: International Religious Freedom Report 2002, 7 October 2002, section II.
[155] Ibid.
[156] U.S. Commission on International Religious Freedom, Report on the Russian Federation, May 2003, p. 6; see also pp. 15-17.
[157] U.S. Department of State, Russia: International Religious Freedom Report 2002, 7 October 2002, section II.
[158] Definition of the Constitutional Court of the Russian Federation of 7 February 2002 on the complaint of religious group "Moscow Branch of the Salvation Army" [Internet]
[159] U.S. Department of State, Russia: International Religious Freedom Report 2002, 7 October 2002, section II.

105. The U.S. Commission on International Religious Freedom noted a marked increase in attacks against **Muslim or Muslim-appearing persons** in Russia in recent years. Often, skinhead groups are behind these attacks, but the police reportedly do not always make adequate efforts to investigate or prosecute such cases.[160] Generally, it is said that the "anti-Muslim" feelings stem from the outbreak of the armed conflicts in Chechnya and were further aggravated after the "Nord-Ost" hostage crisis in Moscow in October 2002.

106. Human rights activists are concerned that **anti-Semitism** is still a significant part of the mindset of politicians, citing for instance members of the State Duma and local government officials who have made public derogatory remarks about Jews.[161] The governor of Krasnodar Krai reportedly claimed that there was a Zionist plot in his province, although very few Jews live in that region.[162] The U.S. Department of State reported numerous instances of prejudice and social discrimination against Jews, as well as vandalism and occasional violence, including arson attacks on persons and on synagogues, cemetery desecration, and physical assaults. The incidents (of 2001 and 2002) occurred in various locations throughout the country, such as nearby Moscow, Orenburg, Rostov, Ulyanovsk, Yashkar-Ola, Kostroma, Ryazan, Krasnoyarsk, Samara, Nizhniy Novgorod, and Omsk.[163] Generally, these attacks are perpetrated by non-state actors and Russian authorities are usually quick in condemning such attacks. However, only in rare cases are perpetrators identified.

107. On 25 October 2003, Mikhail Khodorkovsky, an "oil baron" and "oligarch" (to use the local terminology qualifying extremely wealthy individuals) was arrested on charges of fraud and tax evasion. Since then, numerous articles were published on Russia's oligarchs. According to some editorialists, "oligarch" is a term of art for "rich Jews" who made their money in the massive privatization of Soviet assets in the early 1990s.[164] Khodorkovsky is indeed of Jewish origin. Reportedly, since 2000, every major figure exiled or arrested for financial crimes has been Jewish (e.g. Vladimir Gusinsky, former president of the Russian Jewish Congress, billionaire Boris Berezovsky, who eventually was granted asylum in the United Kingdom, and Leonid Nevzlin, prominent Yukos shareholder).[165] Khodorkovsky had also expressed political opinions critical of the current government and provided financial support to political parties in opposition of the Kremlin. Thus, some explained Khodorkovsky's arrest by his involvement in politics.[166] On several occasions, President Putin has spoken in favor of the necessity to preserve ethnic and religious tolerance. However, some nationalist politicians have made openly racist or anti-Semitic statements. While it cannot be said that ordinary Jews in Russia are openly harassed, the fact that some politicians make public anti-Semitic

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[160] See also: U.S. Commission on International Religious Freedom, Report on the Russian Federation, May 2003, p. 13; see also p. 14.
[161] Anti-Defamation League, Anti-Semitism in Russia, 2003, 20 April 2004, http://www.adl.org/Anti_semitism/as_russia_2003.asp.
[162] U.S. Department of State, Russia: International Religious Freedom Report 2002, 7 October 2002, section II.
[163] Ibid, section III. See also, U.S. Commission on International Religious Freedom, Report on the Russian Federation, May 2003, pp. 12-13.
[164] The Moscow Times, "Who's the Biggest Loser?" by Bruce P. Jackson, The Washington Post, 29 October 2003.
[165] Ibid.
[166] Ibid.

statements with impunity may contribute to create a climate where extremist and "neo-nazi" groups feel free to perpetrate racist acts.[167]

3. Homosexuals

a) Decriminalizing Homosexuality in the Russian Federation

108. Male homosexuality had been a criminal offence in the Soviet Union since 1933. On 29 April 1993, however, Article 121 of the Criminal Code was amended, thus decriminalizing sexual relationships between males.[168] The article had previously contained two parts, but after the amendment, only one remained. On 1 January 1997, the current Criminal Code entered into force for the Russian Federation. The relevant provisions in this context are in Chapter 18, entitled "Crimes against the sexual inviolability and sexual freedom of the person" (articles 131-135). Rape is defined in article 131 as a sexual relation with the use of violence or with the threat of its use or as taking advantage of the victim's helpless situation. Also punishable by deprivation of liberty is pederasty, lesbianism or any other sexual action with the use of violence or with the threat of its use or in taking advantage of the helpless condition of the victim (article 132 on violent sexual actions). Further, compulsion to perform certain sexual actions, such as illicit relations, pederasty, lesbianism, is prohibited under article 133 and punishable by a fine or corrective labor.[169]

109. In August 1993, after the decriminalization of homosexuality, Russian homosexuals announced the creation of an advocacy group, Triangle, striving for equality for gay men and lesbians. The group also acts as an information centre for homosexuality and HIV/AIDS, and is involved in political activities. According to activists, treatment of homosexuals has improved since the legal provisions against male homosexuality were repealed. There are now several homosexual groups across the country, along with openly gay bars and cafes. Public opinion and the press do not condemn homosexuality. People are said to be increasingly willing to be tested for HIV because they no longer have to worry about being arrested. Some possible prisoners of conscience were believed to have been released following the amendment in April 1993 of a law punishing consensual, adult homosexual acts.[170] Estimates put the number of homosexuals and bisexuals in the Russian Federation to at least half a million, or one per cent of the Russian adult male population.[171]

110. Nonetheless, the majority of homosexuals hide their sexual orientation, and homosexuals still fear social censure and discrimination in the workplace. Homosexuals may also face discrimination and mistreatment in the army and while in detention. As regards the latter, violence is said to be common in Russian prisons in general. However, homosexuals are among those groups -- e.g. informers,

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[167] See also: Leonard Terlitsky, HIAS Representative in Moscow, Notes from Moscow: An update of the situation for Jews in the Former Soviet Union, HIAS, January 2004.
[168] The amendment entered into force on 17 May 1993.
[169] Articles 134 and 135 relate to illicit sexual relations and depraved actions with a person who has not yet reached 14 years of age.
[170] Amnesty International, Annual Report 1994 – Russia, 1 January 1994.
[171] Press Release by the Russian Gay Group "You and I" on an Attempt to Recriminalize Gay Sex in Russia, www.gay.ru/english/community/politics/2002d.htm (accessed in November 2003).

rapists, prison rape victims, and child molesters -- who are afforded the harshest treatment, with little or no protection provided by the prison authorities.[172]

111. Female homosexuality was only rarely legally prosecuted in Russia, although some reports suggest that until the early 1990s, female homosexuals in the Soviet Union were subjected to forced psychiatric treatment.[173]

b) Rights and Treatment of Homosexuals

112. As regards the labor market, protection against discrimination of job applicants and against discriminatory dismissals is contained in the RF Code of Labor Laws only in general terms, without explicitly mentioning sexual orientation (articles 16, 40-42 and 77 of the RF Code of Labor Laws). Activists claim that openly homosexual persons are discriminated against when applying for jobs or after their "coming-out"; they also state, however, that so far no attempt has been made to appeal such discrimination in court, as there are no witnesses willing to testify for fear of losing their job.[174] They also claim that there are instances where same-sex couples were denied registration in the same premises on various formal grounds, such as "absence of kinship" or "sanitary norms".[175]

113. On 30 June 2001, three out of four Moscow gay venues were the subject of police searches. A group of armed persons in civilian clothes searched all the premises, reportedly without a warrant, and carried out identity documents checks, without explaining the purpose of their visit or stating who they worked for. Though some were beaten, none of the victims filed a complaint with the Ministry of Interior, for fear of publicity.[176]

4. Draft Evaders/Deserters

a) Obligation to Serve in the Russian Military

114. Under article 59 of the Constitution of the Russian Federation, defense of the homeland is a duty and obligation of the citizens of the Russian Federation. Citizens of the Russian Federation shall perform their military service in conformity with federal legislation. According to the Federal Law on the Conscription Obligation and Military Service of 28 March 1998 (article 22), all

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[172] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 1.c.

[173] Masha Gessen, The Rights of Lesbians and Gay Men in the Russian Federation: An International Gay and Lesbian Human Rights Commission Report, IGLHRC 1994, pp. 17-18; as cited in: Nikita a. Ivanov, Legal Position of Russian Lesbians and Gays, November 2002, www.gay.ru/english/communty/law/review00.htm (accessed in November 2003).

[174] Nikita a. Ivanov, Legal Position of Russian Lesbians and Gays, November 2000, www.gay.ru/english/communty/law/review00.htm (accessed in November 2003).

[175] Ibid. It should be noted that this sort of "harassment" by authorities frequently also happens to other, non-homosexual persons.

[176] Nikita Ivanov, Unlawful Searches Target Moscow Gay Venues, 30 June 2001, www.gay.ru/english/communty/politics/2001a.htm (accessed in November 2003). For instance, it was reported that on International Human Rights Day on 10 December 2002, homosexual groups were banned from holding a news conference in the House of Journalists in St. Petersburg: Reuters, "Russian Gays Still Suffer, Despite Sexual Revolution", 30 December 2002, www.sodomylaws.org/world/russia/runews09.htm (accessed in November 2003).

males between 18 to 27 years not exempted from military obligations shall be drafted for military service, which lasts for two years.[177]

115. Starting in 2004, the conscription into the Russian military will gradually be abolished.[178] At the time of writing, only one unit of the Russian military, the paratroopers unit in Pskov, was transformed and is now completely composed of contract soldiers. In November 2003, President Putin announced that by the end of 2007, contract soldiers should make up almost half the military, which would then gradually allow for the reduction of the draft term to one year.[179]

b) Criminal Liability for Draft Evasion and Desertion

116. According to article 328 of the RF Criminal Code, draft evasion is considered a criminal offence punishable by fine, arrest for three to six months, or imprisonment for up to two years. Illegally evading alternative civilian service is punishable by fine, forced labor, or arrest for three to six months. The maximum punishment for desertion is seven years imprisonment, and for armed or group desertion, ten years (article 336 of the RF Criminal Code). According to the note to article 338 of the RF Criminal Code, criminal responsibility may be waived if the unauthorized absence from a military unit or the desertion is committed for the first time and if such absence or desertion was caused by a combination of grave circumstances. Leaving a military unit without authorization can be punished by arrest for up to six months, imprisonment for up to five years or assignment to a disciplinary battalion up to two years, depending on the duration of the non-authorized absence (article 337 of the RF Criminal Code). Lastly, the refusal to obey orders of a superior officer, or harming the interests of service, can be punished by restrictions in military service of up to two years, arrest for up to six months or assignment to a disciplinary battalion for up to two years (article 332 of the RF Criminal Code).

117. Criminal responsibility for crimes against the military service committed during wartime or during fighting conditions shall be determined by special legislation of the Russian Federation (article 331 point 3 of the RF Criminal Code), which, at the time of writing, was not yet passed. Thus, no special war legislation is applicable.[180]

c) Alternative Civil Service

118. According to article 59(3) of the RF Constitution, Russian citizens whose convictions and faith are at odds with military service have the right to opt for alternative service. Article 2 of the 1998 Law on the Conscription Obligation and Military Service also provides that "citizens of the Russian Federation have the right, in accordance with the legislation, to perform an alternative service". The Law on Alternative Service, implementing this constitutional right, was eventually passed by the State Duma in July 2002, after years of delays in Parliament, and entered into force on 1 January 2004. According to this law, the alternative service is to last three and a half years (almost twice as long as the military service of two

[177] The law is further complemented by the Decision No. 587 of the Government of the Russian Federation "On the Confirmation of the Regulation regarding Conscription for Military Service of Citizens of the Russian Federation" of 1 June 1999.
[178] Putin Moves to Make Good on Yeltsin Pledge, the Moscow Times, 23 November 2001. See also: Human Rights Watch, Conscription through Detention in Russia's Armed Forces, November 2002, p. 5.
[179] The Moscow Times, "Military Unready to Face Threats, Says Putin", 19 November 2003.
[180] The regular RF Criminal Code is also applicable for those who commit a crime in the Chechen Republic.

years) or three years for those who are willing to perform alternative service on military bases.

119. Before the Law on Alternative Service entered into force, the Constitution, as a legal instrument of direct application, served as the basis for the judiciary to take decisions in cases involving conscientious objectors. According to the Soldiers' Mothers Committee, each year some 1,000 to 1,500 conscientious objectors from all parts of Russia went to court to defend their right to alternative service. Application of article 59(3) of the RF Constitution by the courts was inconsistent. In some cases, following a judicial review, conscientious objectors were not recruited but allowed to wait for the adoption of the Law on Alternative Service; in other cases they have been forced to perform military service.[181] The RF Ombudsman also stated that the courts' practice on this issue was not consistent.[182]

d) Amnesties Affecting Deserters and Draft Evaders

120. On 12 March 1997, the State Duma declared an amnesty for combatants in the (first) conflict in Chechnya from 1994 to 1996.[183] The amnesty pardons all those who committed "socially dangerous acts connected with the Chechen conflict". It covers Russian soldiers who deserted or evaded conscription during the war.

121. In February 1998, the Military Prosecutor's Office launched operation "Deserter, Give Yourself Up", where past deserters can approach the Military Prosecutor's Office and turn themselves in. In these cases, they shall be exempted from incurring criminal punishment for desertion, but the Military Prosecutor's Office is to check whether they committed any other criminal acts in their absence from the military service. They will further be required to finish the term of service. According to press reports, the operation has been successful, with some 5,000 persons reporting to the Military Prosecutor's Offices countrywide. There have been reports from some regions that deserters have been detained and faced criminal charges despite the amnesty, but these seem to be occasional mistakes by local authorities.

122. On 13 December 1999, the State Duma adopted the Regulation "On announcement of amnesty" with regard to those who committed criminal offences during the anti-terrorist operation in the North Caucasus.[184] The regulation is applicable to those who committed criminal offences on the territories of Chechnya, Ingushetia, North Ossetia-Alania, and the Stavropol Region from 1 August 1999 to 16 December 1999 (the date the Regulation entered into force) and to those who gave up armed resistance and voluntarily delivered arms. This amnesty is not applicable to foreigners, stateless persons, those recognized as extremely dangerous recidivists, and those accused of dangerous crimes such as murder, severe injury, kidnapping, rape, robbery, terrorism, theft of weapons, etc. However, despite the declared amnesty, NGOs reported that many Russian soldiers

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[181] Interview with UNHCR, summer 2002, on file with UNHCR.
[182] Statement "On the Draft Law on Alternative Civil Service", of 15 March 2001.
[183] Resolution of the State Duma of the Russian Federation of 12 March 1997 No.1199-II GD "On Announcement of the Amnesty with Respect to Persons who Committed Publicly Dangerous Acts in Connection with the Armed Conflict in the Chechen Republic".
[184] Resolution of the State Duma of the Russian Federation of 13 December 1999 No.4784-II GD "On Announcement of the Amnesty with Respect to Persons who Committed Publicly Dangerous Acts in the Course of Conduction of the Anti-Terrorist Operation in the North Caucasus".

released in Chechnya are still being held in Russia and are under criminal investigation for desertion. The same NGOs also mentioned cases of Russian soldiers being detained in their current military unit on charges of desertion. The 1999 amnesty was passed just a few months after the second military campaign in Chechnya began. As a result, 500 persons ("rebels") were reported to have turned in their weapons.[185]

123. Following the adoption of the Constitution of the Chechen Republic on 23 March 2003, the State Duma passed a series of resolutions on 6 June 2003, on the amnesty of

> persons who committed socially dangerous acts in the course of an armed conflict and/or anti-terrorist operations within the borders of the former Chechen-Ingush Autonomous Soviet Socialist Republic during the period from 12 December 1993 till the day the Resolution on Amnesty came into force, who resigned from illegal armed formations or laid down voluntarily their arms and military equipment till midnight, 1 September 2003.[186]

124. The amnesty does not cover those persons who have committed the following offences: murder, causing severe personal injury, kidnapping, rape, violent sexual assault, trafficking of minors, violent robbery, terrorism, hostage-taking, banditry, outrages on dead bodies, attempts on the life of a Government official, sabotage, obstructing the administration of justice, attempts on the life of a civil servant administering justice, threats or forcible acts in connection with the administration of justice, attempts on the life of a law enforcement officer, violence against a superior, and genocide. Further, persons benefiting from the amnesty "shall not be cleared of the responsibility to compensate for the damage they caused by committing socially dangerous acts". The decision to accord amnesty to a person is to be taken on a case-by-case basis. The amnesty was expected to free immediately 90 per cent of the 300 servicemen convicted or awaiting trial for non-grave crimes committed in Chechnya. As for the rebels, about the same number was expected to be freed.[187] According to the Government, several hundreds benefited from the amnesty so far. At the time of writing, the deadline of 1 September 2003 had not been extended.

e) Military Draft through Detention

125. In general, there is always a shortage of draftees for military service in the Russian Federation, which has had a conscription army since 1918.[188] According to some human rights groups, there is concern that in the mid-1990s, Russia's military leadership sent poorly prepared conscripts to fight in the Chechen Republic, where

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[185] The Moscow Times, "Duma Approves Chechen Amnesty", 22 May 2003.
[186] State Duma Resolution No. 4127-III of 6 June 2003 "On the Procedure for Application of the Resolution of the State Duma of the Federal Assembly of the Russian Federation 'On Declaration of Amnesty in connection with the Adoption of the Constitution of the Chechen Republic'". See also State Duma Resolution No. 4125-III of 6 June 2003 "On Declaration of Amnesty in connection with the Adoption of the Constitution of the Chechen Republic" and State Duma Resolution No. 4126-III of 6 June 2003 "On the Resolution by the State Duma of the Federal Assembly of the Russian Federation 'On the Procedure for Application of the Resolution of the State Duma of the Federal Assembly of the Russian Federation On Declaration of Amnesty in connection with the Adoption of the Constitution of the Chechen Republic'".
[187] The Moscow Times, "Duma Approves Chechen Amnesty", 22 May 2003.
[188] Human Rights Watch, Conscription Through Detention in Russia's Armed Forces, November 2002, p. 4.

thousands of these conscripts died, in turn leading to popular discontent with the treatment of conscripts.[189]

126. In 2000, military authorities, together with the police, started to implement a practice of "round-up operations" in major cities, including Moscow and St. Petersburg, as well as in other, smaller cities, in order to meet the draft quota imposed for their cities/regions. When recruitment officials fail to hand over the summons order to a man of draft age, they inform the police of his name, requesting the police to intervene to "ensure [his] presence" at conscription proceeding centers (article 31(2) of the Law on the Conscription Obligation and Military Service). The police then stop and detain these young men at their homes, at metro stations, on the street and in other public places (including round-up operations in dormitories), and deliver them to the military recruitment office, where they are subjected to accelerated conscription procedures and their contacts to the outside world are limited as much as possible in order to avoid intervention by relatives. The majority of these conscripts are sent to military units the very same day of their detention by the police.[190]

127. This practice was deemed to be unlawful by the prosecutor's office, as the police are only empowered to make a protocol of administrative violation in case of refusal to accept the summons order for the military (1991 RF Law on Police). As a result, the police started to bring potential draft dodgers to police stations (instead of military recruitment offices), where they are subsequently picked-up by the military.

f) Military Draft to Chechnya

128. Persons subject to military conscription can be divided into two groups: draftees and reservists. There are special legal acts regulating the duties of each category. Further, any professional officer serving in the military under contract (contractee) can be sent on mission to a conflict area. According to the Presidential Decree No. 1366 on "Recruitment for the Military Service in the Russian Federation" of 15 October 1999, all draftees can be sent to conflict areas (including Chechnya) after six months of military service.

129. There are, furthermore, two categories of reservists: 1) officers having completed the military faculty (so-called "Reserve officer's training course") or having graduated from any (other) military school; and 2) soldiers having already performed their military service. The Presidential Decree No. 660 on "Recruitment of Reservist Officers for the Military Service for the period 2000 – 2005" of 10 April 2000 foresees that 15,000 reservist officers, as well as 5,000 newly-graduated officers, will be called up.

130. A draftee (after six months of training) or a reservist (after two months of training) cannot refuse to go to a conflict area (including the Chechen Republic) in case he is assigned to serve there. As for contractees, they have a *de jure* freedom

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[189] Ibid.
[190] Ibid, pp. 8-9. Human Rights Watch extensively researched and interviewed several persons that were conscripted in such a manner and found that some basic human rights of the "conscripts through detention" had been violated in the process (such as the protection from arbitrary detention, the right to effective appeal, etc.).

of choice.[191] In practice, if a contract soldier refuses to serve, his contract is subject to termination, and he faces dismissal from the military. Recently, the press reported on a famous case of the Perm OMON contract elite group of officers who refused to go on mission to Chechnya because they had not been paid for their previous mission there. For this, they were fired from their unit.

g) Military Draft of Ethnic Chechens

(1) Ethnic Chechens, residents of the Chechen Republic, drafted on the territory of Chechnya

131. For a certain period, the military did not conduct a military draft within the Chechen Republic, primarily due to the technical impossibility of organizing and conducting a draft on the Chechen territory.[192] Now, when the draft is possible, it is not conducted on a full scale, as there are still many obstacles, e.g., lack of proper identification documents.

132. The first military draft on the territory of the Chechen Republic was conducted in the fall of 2001. Young men born between 1975 and 1983 were subject to the draft. In total, 525 residents of the Chechen Republic were drafted for military service in 2001. In the draft of spring 2002, in the Gudermes district alone, 70 persons were drafted. Chechen draftees may serve in the Chechen Republic or in any other region of the Russian Federation. However, draftees from the Chechen Republic usually serve in the railway or construction troops, or in the troops of the Ministry of Interior.

133. All men subject to the military draft must go through the Conscription Commission, following which they receive a certificate of registration at the conscription office. This document may be checked at any time by law enforcement agencies and/or at military checkpoints in the Chechen Republic. In case a man of draft age is not in possession of this document, he may be detained, pending verification of the person's situation.

(2) Ethnic Chechens, residents of the Chechen Republic, drafted on RF territory outside of Chechnya

134. The general rule is that a person shall be drafted at the place of his permanent residence (while he may actually be sent to perform his military service in any region of the Russian Federation). However, instances have been reported of persons temporarily sojourning in a place other that their place of permanent residence (i.e. other than their place of residence registration) and who were drafted at the place of sojourn [193] If the person is sojourning at a different place than his place of residence, he should then register (with the police) at his place of residence. If the sojourn at the place other than the place of residence lasts more than three months, the person should register with the local military recruitment office and, under certain circumstances, may be drafted at the place of residence. According to representatives of the Soldiers' Mothers Committee, there were cases when young men, stopped during "round-up operations", without registration at the

[191] See the Presidential Decree No. 660 on "Recruitment of Reservist Officers for the Military Service for the period 2000 – 2005" of 10 April 2000.
[192] According to press reports, this period stretches from 1994 until 2001.
[193] UNHCR's interview with the Soldiers' Mothers Committee, Summer 2002.

place of sojourn in that region were transferred to the military recruitment office for further assignment to a military unit.[194] In principle, such cases can be appealed to the higher military body or to court of general jurisdiction. In practice, however, the appeal can only be initiated by the parents or a lawyer, since following conscription (through detention); the person may be deprived of the possibility to appeal the draft.[195]

(3) Ethnic Chechens, non-residents of the Chechen Republic

135. As for ethnic Chechens who permanently reside outside of the territory of the Chechen republic, military draft is carried out on a normal basis. In practice, ethnic Chechen draftees are not sent to serve in the Chechen Republic.

h) Main Reasons for Draft Evasion and/or Desertion

136. The institutionalized culture of "dedovshchina"— whereby more experienced soldiers bully and often torture new recruits — has made suicide a major problem for the army. In 2001, the military prosecutor's office admitted to dealing with some 2,000 conscript deaths a year, but independent human rights organisations put the annual toll at nearer 3,000. According to Defense Minister Sergei Ivanov, 337 servicemen were killed in combat or died in accidents in 2003; about 35 per cent of non-combat deaths in the military were suicides.[196] According to estimates, there are 40,000 deserters at any given time in the Russian Federation.[197] Regarding mistreatment, it should be noted that 30 per cent of the complaints (when they are formulated) are against military officers who mistreat their subordinates. Reportedly, there are also instances of extortion of soldiers by officers. No accurate figures are available regarding how many civilians died due to the ongoing hostilities in Chechnya; the figures vary depending on the source consulted. To a lesser extent, lack of adequate medical care or malnutrition is cited as a reason for deserting the armed forces.[198]

137. According to the 2002 report by the Russian Federation to the CCPR

> Breaches of the regulations on conduct between military personnel and incidents of officers striking their subordinates continue to be a serious problem in the Armed Forces and other military units in the Russian Federation.[199]

138. The report continues

> To study the problem of non-regulation conduct in detail, the Central Military Procurator's Office, in conjunction with the research institute on regard for the law and the maintenance of law and order operating within the Office of the Procurator-General of the Russian Federation, has conducted sociological research into latent criminality and the

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[194] Ibid.
[195] Ibid.
[196] The Moscow Times, "Military Unready to Face Threats, Says Putin", 19 November 2003.
[197] Ibid.
[198] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 1.c.
[199] UN Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Fifth periodic report by the Russian Federation, Human Rights Committee, CCPR/C/RUS/2002/5, 9 December 2002, para. 52.

underlying criminological factors. The findings have been used in the design of measures to counter violent crime in the Armed Forces. The law-and-order situation in the army and navy reveals, on inspection, that the tenaciousness of non-regulation conduct is closely bound up with other unlawful phenomena in the military sphere.[200]

139. According to a report by Human Rights Watch in Moscow, conscript soldiers' access to proper food and medical care is often inadequate. Human Rights Watch called on the Russian Government to examine the findings, warning that poor nutrition threatens the military's fighting strength.[201] Russian News Agencies reported in January 2003 that criminal proceedings were launched against senior military officials, who were responsible for forcing 119 border guard conscripts "to stand outside for hours in sub-zero temperatures". More than 90 conscripts fell ill with pneumonia, of whom 40 remained in hospital one month after the incident and one man died of double pneumonia.[202]

140. The situation of military units deployed in Chechnya is reportedly difficult and lawlessness, as well as alcohol abuse, is said to prevail in certain units. According to the Soldiers' Mothers Committee, there are credible reports according to which soldiers are often mistreated, including instances of detaining soldiers in dugout holes or iron boxes exposed to the sun.[203] The situation is aggravated by the fact that military units in Chechnya are isolated and it is practically impossible for a mistreated victim to find protection. Military prosecutor offices are often reluctant in taking action against the abusers. In the famous *Budanov* case,[204] where military officer Budanov was accused of abducting and murdering a Chechen girl, it was established that he had beaten up and put one of his subordinates in a pit because of his refusal to open fire at a village. However, the military prosecutor maintained that there had been no abuse of power in that case.

i) Treatment of Draft Evaders and Deserters

141. Search operations for deserters are usually conducted jointly by the military and the police. Following apprehension, a deserter is transferred to the military authorities. He is subsequently returned to the military unit from which he deserted in order for his case to be investigated by the chief of the military unit or the military prosecutor. The major problem lies in the fact that a person who fled his unit due to abuse or mistreatment is returned to the very same unit. There exists a 1996 Directive of the General Commandant's Office, prescribing that in cases where a deserter left his unit because of beating, he should not be returned there. According to the Soldiers' Mothers Committee, this provision is not implemented

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[200] Ibid.
[201] BBC NEWS, "Russian Army Sick and Hungry", 13 November 2003, [Internet]
[202] Radio Free Europe/Radio Liberty, Military Officials Take the Heat for Freezing Conscripts, 20 January 2003, [Internet]
[203] Interview with UNHCR, summer 2002.
[204] Yuri Budanov, a former colonel in the Russian military, was accused of kidnapping and murdering an 18-year old Chechen woman. Original charges included rape, which was dropped during the proceedings, however. Budanov was the first Russian officer to be prosecuted for a crime committed against a civilian in Chechnya. A first court ruled that Budanov was (temporarily) insane at the time of killing and, thus, not criminally responsible. The Supreme Court, however, overturned the ruling. Budanov was eventually convicted in July 2003 and sentenced to ten years in prison. There is currently another court case ongoing involving four military officers, members of an elite military intelligence unit and charged with murdering five men and a woman, all civilians, in Chechnya in 2002. See, The Moscow Times, "4 Officers Go on Trial For Chechen Killings", 19 November 2003.

in practice, reportedly because, according to the procedure, a military officer from the same unit investigates cases of (alleged) beatings. As a result, in 90 per cent of the cases, the deserters are returned to the same unit from which they fled in the first place.[205]

j) Homosexuals in the Russian Military

142. As mentioned further above, homosexuals may face discrimination and mistreatment while serving in the military.[206]

5. Violence by Non-State Actors

143. Where serious discriminatory or other offensive acts are committed by the local populace (i.e. non-state actors), they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.[207]

144. In 1998, the Danish Refugee Appeals Board dealt with a case concerning a Jewish woman with Russian citizenship who claimed she had been subject to persecution by non-state agents. The applicant had been working on the publication of a Jewish newspaper and had received threats, been assaulted and raped. Since it had not been possible for her to obtain protection from the Russian authorities, the Danish Refugee Appeals Board granted her asylum.[208]

145. UNHCR, through its Moscow Refugee Reception Centre as well as through NGO partners, regularly receives reports concerning physical assault and/or mistreatment of non-CIS asylum-seekers and of Meskhetians, by "skinhead" gangs (or drunken youth) in Moscow and St. Petersburg and their regions and by so-called "Cossacks" in Krasnodar Krai.[209] In most cases, because of the precariousness of their own legal status, the victims are often reluctant to address a complaint to the police for fear of being imposed administrative fines.[210]

a) Trafficking in Persons

146. The Russian Federation is both a transit and destination country for trafficking in persons for the purpose of sexual and labor exploitation. Moreover, it is also a country of origin for women trafficked to numerous other countries (EU, Middle East, Asia, and U.S.). Reportedly, internal trafficking within the Russian Federation also exists in the form of transportation of young women from the provinces to major cities for the purposes of stripping and prostitution.[211] No reliable estimates

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[205] Interview with UNHCR, Summer 2002.
[206] See above under Section 4.1., para. 2.
[207] UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status, January 1992, para. 65.
[208] Refugee Appeals Board, Denmark, 13 March 1998; as cited in: ELENA, Research paper on non-state agents of persecution, November 1998, p. 14-15.
[209] For Meskhetians in Krasnodar Krai, see: Alexander G. Ossipov, Memorial Human Rights Centre, "The Situation and Legal Status of Meskhetians in the Russian Federation", Moscow, January 2003 (UHCR-commissioned study).
[210] See also above, Annex B(1) on (selected) ethnic minorities.
[211] U.S. Department of State, Trafficking in Persons Report, 11 June 2003, p. 127; U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 6.f.

exist as to the scope, usually reported as being widespread.[212] Further, the corruption of government officials reportedly facilitates trafficking.[213]

147. Most traffickers reportedly operate in organized groups, disguised as employment agencies searching for women. Advertisements for employment abroad are placed in newspapers, public places and on the Internet. In other instances, women posed as returned workers to find (new) victims. Further, the method of mail order brides was also used. Even partners and friends were used to recruit victims. The women recruited normally had to pay a fee for the service, the visa, or the flight ticket. Once in the country of destination, the women are deprived of all their documents and other personal effects and forced to work in the sex industry, often under threat of violence.[214] Children were reportedly kidnapped or purchased from parents, relatives, or orphanages for the purposes of sexual abuse, child pornography, or harvesting of body parts.[215] In some cases, police investigations revealed that the children had been legally adopted by families abroad, whereas in other cases, trafficking of children for sexual exploitation was confirmed.[216]

148. In 2002, several investigations failed for lack of evidence.[217] Fraud was the most frequent basis for the prosecution of traffickers. In practice, it has proven extremely difficult to prosecute a trafficker who lured an adult person to leave the country voluntarily, even when it was for the purpose of prostitution.[218] Prosecuting traffickers of minors is somewhat easier, although the age of consent is 14 years under Russian legislation.[219] In early 2003, norms relating to trafficking crimes were introduced into the Criminal Code. A new Criminal Procedure Code was passed by the government in December 2001 and entered into force on 1 July 2002, providing greater protection for victims and witnesses in court proceedings, as well as for the prosecution by Russian courts of Russian nationals committing crimes abroad.[220]

149. Some sources reported that police and other authorities do not always respond actively to the complaints of trafficking victims, believing that any criminally proscribed behavior, such as slavery, rape and other sexual abuse, forced labor and deprivation of wages, mostly happens after the victims have left the Russian

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[212] According to officials, the scale of trafficking in women in the Russian Federation has grown in recent years. It must, however, be borne in mind that the starting point was virtually zero, since there was no illegal transport of women abroad for sexual exploitation purposes before the early 1990s. The exaggeration in the numbers of Russian women reported by international organizations as falling victim to sexual exploitation abroad is striking. In actual fact, the problem may involve not "tens of thousands" (the number given in a report by the United Nations High Commissioner for Human Rights), far less "500,000 a year" (the kind of figure cited by the European Commission), but a few thousand such women in the course of a year. UN Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Fifth periodic report by the Russian Federation, Human Rights Committee, CCPR/C/RUS/2002/5, 9 December 2002, para. 55.

[213] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 6.f.

[214] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003.

[215] Ibid.

[216] Ibid.

[217] U.S. Department of State, Trafficking in Persons Report, 11 June 2003, p. 127.

[218] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 6.f.

[219] There are reforms underway to raise the age of consent from 14 years to 16 years.

[220] U.S. Department of State, Trafficking in Persons Report, 11 June 2003, pp. 127-28.

territory, and is thus outside of the Russian jurisdiction.[221] Other sources, however, reported positive co-operation with local police and government counterparts, although corruption also appears to be a major hindrance.[222] According to NGO and victims' reports, there have been instances when Russian consular officials abroad have refused to help trafficked women. One reason seems to be that without any documentation -- often confiscated by the traffickers -- the Russian consulates will not render any assistance. The Russian Ministry of Foreign Affairs has not (yet) issued a policy on assistance to trafficked victims, although it is said to be working on relevant guidelines. In addition, there were no government initiatives to return victims of trafficking to Russia.[223] With the exception of deportations by the destination countries, the victims had to cover the costs of their return back home themselves. In most instances, victims returned to Russia did not file any official complaints against the agencies that recruited them for fear of reprisals.[224]

b) Mafia-related Claims

150. Largely, the old Soviet underworld has been replaced by sophisticated criminal organizations, some of whom include former police and/or security professionals. Organized crime groups reportedly have close relations with corrupt officials at various levels of the government.[225] Allegedly, 40-50 per cent of the Russian economy remains grey or black, with the largest concentration of illegal business found in the services sector.[226] As a comparison, Italy was mentioned as a Western European country with a large illegal sector with, however, reportedly only 17 per cent of its economy in the un-official economy.

6. Children

151. The United Nations Convention on the Rights of the Child was ratified by the USSR in 1990 and thus applies to Russia. Domestic legislation provides for the protection of children's rights on the basis of the Constitution, the Family Code, Criminal and Punishment Codes, the Education Act, the 1998 Federal Law on the Basic Guarantees of the Rights of the Child and the 1999 Federal Prevention of Child Neglect and Juvenile Crime Act, as well as the new Labor Code.

152. The legal framework declaring guarantees for children's rights and protection, including international and national legal instruments, is thorough. However, all these provisions and statements conflict with the still existing institution (despite several Constitutional Court decisions during the last years) of registration. Without registration, there is no mechanism to enjoy the formally guaranteed rights for education, health protection, and particular social benefits. Presentation of police registration is necessary for access to education and medical care. This practice is

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[221] Ibid, p. 128; U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 6.f.
[222] U.S. Department of State, Trafficking in Persons Report, 11 June 2003, p. 128; U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 6.f.
[223] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 6.f.
[224] Ibid.
[225] Vladimir Ustinov, Russian Prosecutor General, report to joint session of coordinating council of general prosecutors, internal affairs ministers, heads of security bodies and special services, commanders of border troops, and heads of customs services of CIS member states, Minsk, January 29, 2002.
[226] Freedom House, Nations in Transit 2003: Russia, p. 523.

particularly disadvantageous for internally displaced children, migrants, and asylum-seekers.

153. According to the Russian Labor Code, regular employment of children under the age of 16 is prohibited. There are also special provisions for children between 16 and 18 years of age, e.g. banning dangerous, nighttime and overtime work. However, the Russian authorities responsible for child labor issues are said not to enforce these laws effectively, and children between 14 and 15 years were allowed to be employed, under specific conditions and with the approval of their legal guardian.[227] In 2001, the Labor Inspectorate reported around 12,000 cases in which child labor violations occurred. No reliable information on prosecution for such violations is available.[228] Homeless children are particularly at risk for exploitation in the sex market or criminal activities. There are no effective sanctions against persons using child labor in prostitution and pornography.[229]

154. A large number of children, including some as young as 11, have reportedly been fighting with the separatist forces in Chechnya. In 1996, the authorities of the then Chechen leader Dudayev reportedly admitted that children between 15 and 18, including females, serve in their forces and participate in combat. Child soldiers in Chechnya were reportedly assigned the same tasks as adult combatants and served on the front lines soon after joining the armed forces.[230] Chechen rebels are even said to use children to plant landmines and explosives.[231] Federal forces in Chechnya reportedly placed Chechen boys from 13 years of age and older in "filtration" camps where they were beaten and raped; other federal forces were reported to be involved in the kidnapping of children in Chechnya for ransom.[232]

155. In a 2002 address, the RF Ombudsman reported that, by 2001, the number of children without parental care placed in orphanages had increased to 270,000. He further reported that, during the year 2000 alone, some 43,000 parents had been deprived of their parental rights by a court of law. As one possible explanation, he noted that 70 % of families with children live in "extreme poverty".[233]

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[227] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 6.d.
[228] Ibid.
[229] Ibid.
[230] United Nations Commission on Human Rights, The situation of human rights in the Republic of Chechnya of the Russian Federation. Report of the Secretary-General, E/CN.4/1996/13, 26 March 1996, para. 74. In 2003, Commission on Human Rights did not accept a proposed resolution, E/CN.4/2004/L.29, 8 April 2004, "Situation of Human Rights in the Republic of Chechnya of the Russian Federation," In the draft it had inter alia been proposed that the Commission, deeply concerned about the human rights situation, the humanitarian situation and the security situation in Chechnya, would strongly condemn the ongoing serious violations of international human rights law and international humanitarian law in Chechnya, including forced disappearances, extrajudicial, summary of arbitrary executions, torture, ill-treatment, arbitrary detentions and abductions; expresses its concern at reports of difficulties experienced by the local population in obtaining proper investigations by local law enforcement structures and the public of military prosecutor, and prosecutions, where warranted, of human rights abuses by the security forces, and that the return of internally displaced persons is not taking place on a strictly voluntary basis.
[231] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 5.
[232] Ibid.
[233] Address of the Commissioner on Human Rights of the Russian Federation and Commissioners on Human Rights in Subjects of the Russian Federation to Bodies, Ministries and Departments, Institutions of Local Government and Public Organisations on the Problems of Children Rights Protection, of 21 March 2002.

156. During the same session in September 1999, the Committee on the Rights of the Child raised several other issues. An issue of concern was Russia's lack of proper implementation of article 2 of the Convention on the Rights of the Child (the principle of non-discrimination).[234] Both the Russian Constitution and applicable legislation ban discrimination. The Committee also expressed concern at the insufficient guarantees against the "illicit transfer and the trafficking of children" out of Russia and the "potential misuse of inter-country adoption for purposes of trafficking".[235] Special measures were needed to protect children from child labor, economic exploitation, and commercial sexual exploitation or use in pornography.[236]

7. Journalists and Media Workers

a) Freedom of Expression in General

157. The connection between the media and government remains close in the Russian Federation, and media outlets that offer alternative viewpoints may face substantial legal and financial obstacles. State media are under pressure to reflect government positions, while private outlets typically represent the political biases and business interests of their investors. Journalists and media owners who are critical of the government often come under intense scrutiny and are subject to specious audits, complicated legal battles, and even beatings and arrests. Self-censorship is a significant problem among the country's media.[237]

158. In 2001, the federal government gave itself the power to cancel any agreements or deals that would result in the "illegal estrangement of technical means and objects from federal ownership". The state retains control over all broadcasting and relay stations for television and radio signals by consolidating them under the management of a single government corporation, the Russian Television and Radio Broadcasting Network (VGRTK). The VGRTK oversees the federal signal distribution center in Moscow and its regional subdivisions.

159. Russia's Constitutional Court struck down a provision in the country's election law that restricted media coverage of candidates. Part of the law made it impossible for journalists to express opinions about candidates or detail their background. The press and opposition politicians criticized the law, arguing that it would smother freedom of speech in the run-up to December 2003 parliamentary elections. Reporters and Duma deputies who brought the case said the ruling was a victory for freedom of speech and common sense.[238]

160. There are dozens of Russian-language news sites on the Internet, as well as over 180 sites representing the country's political parties and movements. President Putin has ordered all government agencies to launch web sites and to update them on a daily basis. In June 2002, as part of the state project Electronic Russia, the Government announced the launch of a new version of its official portal. The new web site emphasizes interactive communication between officials and the public by allowing citizens to send letters, complaints, and suggestions concerning the

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[234] Ibid, paras. 866-869.
[235] Ibid, para. 887.
[236] Ibid, paras. 902 and 907.
[237] Freedom House, Nations in Transit 2003: Russia, [Internet]
[238] BBC NEWS, "Russian Court Rejects Media Law", 30 October 2003, [Internet]

Government's functioning. However, it should also be noted that the State continues its surveillance of the Internet through regulations that require Russian Internet service providers to install monitoring devices routing all online traffic through servers controlled by local police.[239]

161. The vast majority of Russia's newspapers and magazines are privatized, and private capital replaced the State as the principal controller of print media. Currently, a handful of Russia's most powerful financiers control the major national newspapers. Lacking financial support from central authorities, Russia's local and regional press outlets fell upon hard times. Nevertheless, most media outlets that are technically private, especially in the provinces, rely on some form of State sponsorship or patronage in the guise of reduced prices or tax benefits. As of 2002, more than 2,000 newspapers were receiving direct financial subsidies.[240]

162. Independent TV broadcasters critical of the Government were forced off the air in the first two years of Putin's presidency. The last nationwide independent TV station, TVS, consisting mainly of former TV6 and NTV employees, was suddenly taken off the air and replaced by a sports channel in June 2003.[241] The Government pointed to the station's mounting financial and management difficulties. Liberal observers criticized the move as the latest bid to curb media freedom.[242]

163. Court rulings on libel and defamation were used to curtail the freedom of journalists to criticize public figures. Libel is a criminal offence under the 1991 Law on the Mass Media and the 1991 Law on the Protection of Citizens' Honor, Dignity, and Business Reputation, and many government officials and politicians attempted to utilize this legal mechanism to their benefit.[243] The OSCE Representative on Freedom of Media and the Secretary General of the Council of Europe, made a joint statement on 29 August 2003, calling on the Russian Federation to reconsider legislation on libel.[244]

164. A number of organizations, many at the regional level, aim to defend journalistic freedom and integrity. One of the most prestigious is the Glasnost Foundation, whose activities often meet with government interference. The Union of Journalists of Russia is the main professional group representing media professionals. Freedom House's annual *Survey of Press Freedom* rated the Russian Federation "Partly Free" since 1992.[245]

b) Applicable Legislation

165. The Russian Constitution guarantees the freedom of ideas and speech and forbids the propaganda or agitation instigating social, racial, national, or religious hatred and strife. It further guarantees the freedom of mass communication and

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[239] Committee to Protect Journalists, Attacks on the Press in 2002: Russia, www.cpj.org/attacks02/europe02/russia.html (accessed in December 2003).
[240] Freedom House, Nations in Transit 2003: Russia, [Internet]
[241] See, e.g. Reporters without Borders, Russia: Government closes last independent TV station while parliament restricts election coverage, 24 June 2003, www.rsf.org/print.php3?id_article=7316 (accessed in December 2003).
[242] BBC NEWS, Country Profile: Russia, [Internet]
[243] Freedom House, Nations in Transit 2003: Russia, [Internet]
[244] OSCE, News Release, "OSCE Media Representative and Council of Europe call on Russia to reconsider legislation on libel, 29 August 2003, [Internet]
[245] Freedom House, Nations in Transit 2003: Russia, [Internet]

bans censorship.[246] The Russian Criminal Code defines slander as the "spreading of deliberately falsified information that denigrates the honor and dignity of another person or undermines his reputation".[247] The punishment for slander and mass media libel is higher when contained "in a public speech or in a publicly performed work", as is slander accusing a person of "committing a grave or especially grave crime". Journalists in Russia have been accused of libel and faced prosecution in courts. To determine whether such charges are legitimate in an individual case, one would have to look at the article, or the media program, and its exact content. Further, the 1991 Law on Mass Media contains some important articles regarding libel by media.[248] The Russian Civil Code also contains a provision protecting the honor, dignity and business reputation.[249]

c) Difficulties Encountered by Media

166. According to the international NGO Reporters without Borders, the Russian Government aims to control the media and to curb freedom of press by means of new restrictive laws, high fines threatening the survival of media, arbitrary closures, searches, and seizure of freshly-printed newspapers. The Government actions are usually directed against journalists and media seen by the Government as being too independent and/or critical of the authorities.[250] Another NGO, the Committee to Protect Journalists (CPJ), has described the authorities as practicing "media management" and as "using various branches of the state apparatus to rein in the independent media".[251] According to the CPJ, there is still a certain plurality of views in the independent press. However, direct criticism of senior government officials is more restrained and less frequent than in the 1990s, under former President Yeltsin. The CPJ reported that instead of blatant pressures, the Russian Government now uses more subtle and covert tactics.[252]

167. In 2002, more journalists are reported to have been killed in Russia while doing their job than in any other European country. Other problems encountered by journalists and media range from imprisonment, general police harassment, disappearances, threats, politically motivated lawsuits and hostile corporate take-overs.[253] In figures, Reporters without Borders speaks of ten journalists killed, three media collaborators killed, two disappeared journalists, one imprisoned journalist, 14 journalists arrested, 18 journalists physically attacked and two journalists threatened in 2002. For 2003, the NGO reported on further killings, closure of newspapers and TV stations, forced resignations, criminal prosecution, as well as

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[246] Article 29 of the Constitution of the Russian Federation.
[247] Article 129 of the Criminal Code of the Russian Federation.
[248] See in particular Article 49 (on the duties of a journalist) and, more importantly, Article 51 (on the abuse of a journalist's rights) of the Federal Law on Mass Media of 27 December 1991.
[249] See Article 152 of the Civil Code of the Russian Federation.
[250] Reporters without Borders, Russia – Annual Report 2003, 2 May 2003, www.rsf.org/article.php3?id_article=6529 (accessed in December 2003). The report also contains details of various individual incidents occurred in 2002. As regards events in 2003, their web site provides further accounts.
[251] Committee to Protect Journalists, Attacks on the Press in 2002, Russia, www.cpj.org/attacks02/europe02/russia.html (accessed in December 2003). Again, the report also contains details of various individual incidents occurred in 2002. Further accounts of events in 2003 are posted on their web site.
[252] Ibid.
[253] Ibid, Reporters without Borders, Russia – Annual Report 2003, 2 May 2003.

general violence against media staff.[254] In addition, investigations by law enforcement agents into rights violations of journalists and media workers rarely lead to the bringing of charges. For instance, NGOs criticized the way the authorities conducted the investigation of specific incidents, claiming that there were contradictory statements and prematurely ruling out the possibility of any linkage to a journalist's work.[255] In another case, the judiciary was criticized for having acquitted six suspects in the murder of a journalist for lack of evidence, despite the fact that some of them had confessed to parts of the crime.[256]

168. The persons reported as victims are journalists, editor-in-chiefs, TV station owners, radio staff, etc. In most instances, the victims were reporting on delicate issues, such as the armed conflict in Chechnya, or expressing criticism of federal and local authorities and of the military and the FSB, or investigating corruption and gang wars. In the latter case, the journalists can also face threats from other persons than the authorities (i.e. local warlords in the Chechen context, or leading figures from criminal organizations).[257]

169. A number of media outlets faced various sorts of pressure from the authorities during and after the hostage crisis from October 2002, when Chechen rebels seized a Moscow theatre with some 750 hostages. The private Moscow TV station "Moskoviya" was temporarily closed for allegedly promoting terrorism in their coverage of the siege. The independent Moscow-based radio station "Ekho Moskvy" was forced to remove from its web site the text of a telephone interview with one of the hostage-takers. Even the government-run Moscow daily "Rossiiskaya Gazeta" was warned for publishing the photograph of the body of a woman killed by the hostage-takers.[258] Following the end of the hostage crisis, the parliament approved amendments to the Law on the Struggle with Terrorism and the Law on Mass Media, banning the media from printing or broadcasting information that justifies extremist activities and resistance to counter-terrorist operations, hinders counter-terrorist operations or reveals anti-terrorist acts. Several NGOs, as well as media representatives, cried out against the amendments, claiming the provisions were too broad and could potentially be used to ban all discussion of the crisis in Chechnya and to prevent the media from reporting critically on government responses to crises.[259] In the same month, President Putin vetoed the amendments, sending them back to parliament for revision. Nonetheless, the Government maintains an information embargo on Chechnya, thereby restricting the ability of national and foreign media to report independently on the armed conflict.[260]

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[254] Reporters without Borders, Russia – Annual Report 2003, 2 May 2004, http://www.rsf.org/article.php3?id_article=10229&Valider=OK

[255] Reporters without Borders, Russia: Newspaper editor's murder: fact-finding visit raises doubts about official version, 23 October 2003, www.rsf.org/print.php3?id_article=8339 (accessed in December 2003). See also: Moscow Helsinki Group, Alternative NGO Report on Observance of ICCPR by the Russian Federation, 2003 (comments to article 19(1) of the ICCPR).

[256] Committee to Protect Journalists, Attacks on the Press in 2002: Russia, www.cpj.org/attacks02/europe02/russia.html (accessed in December 2003).

[257] See Section 5 above for more information on victims of violence by non-state actors.

[258] Committee to Protect Journalists, Attacks on the Press in 2002: Russia, www.cpj.org/attacks02/europe02/russia.html (accessed in December 2003).

[259] Ibid.

[260] Ibid.

170. In this context, it is also worth mentioning the case of Andrei Babitsky, a journalist for (U.S. Government-funded) Radio Free Europe/Radio Liberty (RFE/RL). Andrei Babitsky was arrested by federal troops in January 2000, at the outskirts of Grozny (but there are contradictions among various official sources as to the exact date of the arrest) and he was brought at the Chernokozovo detention centre, Naursky district of Chechnya. In his coverage of the (second) armed conflict in Chechnya, Andrei Babitsky had included reports from the viewpoint of the Chechen rebels and provided accounts of civilian and military casualties, including (but not limited to) crimes presumably committed by Russian troops. On 13 January 2000, his apartment in Moscow was raided, Babitsky himself was questioned by federal forces in Chechnya the next day and last called home on 15 January. Ten days later, he was declared missing.[261] It was then reported that Andrei Babitsky had been handed over to Chechen rebels in exchange of three Russian prisoners of war. Upon his release at the end of February 2000, Andrei Babitsky denied that this exchange had ever taken place, and that he had instead been handed over to a Chechen group loyal to Moscow.[262]

8. Human Rights Defenders

171. There are numerous international and local human rights NGOs active in the Russian Federation. Generally, they operate without hindrance and many of them investigate and publicly comment on human rights issues, generally without government interference or restriction. Some local officials, however, were said to have harassed human rights monitors. Criticizing the government or regional authorities was usually allowed without negative consequences, whereas criticizing a specific political leader in a region was reportedly less tolerated.[263] NGOs claim that persons with a significant profile have encountered various problems with the authorities. In other instances, NGOs themselves seem to have been attacked. It should be noted that in July 2002, a new Law on the State Registration of Legal Entities entered into force. The new registration procedures for NGOs require that local departments of the Ministry of Justice verify all articles of the respective charter documents for compliance with existing laws.[264] For some NGOs, this has lead to increased scrutiny by local authorities. UNHCR is directly aware of two NGOs in Krasnodar Krai, namely Vatan and The School of Peace, whose registration was cancelled for not acting in conformity with their respective statutes. These happened to be NGOs promoting the rights of Meskhetians in this region. The U.S. State Department also reported that defense lawyers may face harassment by the police, including beatings and arrests, and that human rights advocates have been, in some regions, charged with libel, contempt of court or interference in judicial procedures in cases with distinct political overtones.[265]

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[261] Agentura, "Babitsky capture", www.agentura.ru/english/timeline/2000/babicky/ (accessed in March 2004).
[262] Chechen rebel leaders reportedly also denied the exchange, as have human rights groups and other journalists: World Magazine, "The Babitsky affair", 11 March 2000, www.worldmag.com/world/issue/03-11-00/international_1.asp (accessed in March 2004).
[263] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 4.
[264] Ibid, section 6.a.
[265] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, sections 1.c, 1.d.

172. One known case concerns Vasily Stetsik, the former editor-in-chief of the journal "The Truth about Human Rights" in the town of Novotroitsk, publishing reports critical of the authorities on a regular basis. After Stetsik's office had been attacked several times, he tried to pursue a court case in Moscow, where he was arrested in April 1998 and charged with attempted murder. He was placed in pre-trial detention in Moscow where he was reportedly severely ill treated. In December 1998, he was transferred to a psychiatric hospital in the Smolensk region as a response for his "inadequate behavior in the general cell". In November 2001, he was moved to a closed psychiatric hospital in Orenburg region, where he remained for one more year without informing him or his family of the reason for his detention, nor of his diagnosis. It was reported that Stetsik may have been given medication damaging his health.[266] He was eventually released on 6 November 2002.[267]

173. Bakhrom Khamroev is another human rights activist who was recently arrested and then released. Khamroev is an ethnic Uzbek human rights defender with Russian citizenship, resident in Moscow since 1992, who had previously been an active member of the opposition movement "Birlik" (Unity) in Uzbekistan until his forced exile. Since the mid-1990s, he has been affiliated with the Uzbek opposition journal "Kharakat" (Movement) and worked together with various human rights NGOs in Russia, in particular with Memorial. Khamroev was actively championing the rights of Uzbek nationals threatened with extradition to Uzbekistan because of their political or religious beliefs. On 24 June 2003, Khamroev was commenting on a recent arrest of 55 Central Asians, allegedly "Islamic militants", by the Moscow police in a critical manner, making allegations that the arrest was based on a fabrication invented by the Russian security forces "to cover up their inability to deal adequately with the real terrorist threat" in Russia.[268] Already before this, however, the Russian police, including interrogations with lie detectors, repeatedly harassed Khamroev, as well as his relatives. He was arrested on 20 July 2003 in Moscow. According to his wife who witnessed the incident, the police used excessive force, made derogatory remarks about Muslims and supposedly planted drugs on him, which was later used to hold him in pre-trial detention.[269] Khamroev was released on 20 October 2003 and is still facing charges of illegal possession of drugs. However, according to his lawyer, "none of the departments of the Moscow prosecutor's office wanted to investigate the case ... possibly because they were aware of the fragility of the case against him".[270]

174. Persons seeking redress of their grievances against the Russian authorities for human rights abuses in Chechnya were reported to have been targeted by the government. Human Rights Watch reported that Said-Magomed Imakayev, a Chechen, submitted an application to the European Court for Human Rights relating to the disappearance of his son in 2000 while in detention by Russian

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[266] Amnesty International, Russian Federation: Vasily Stetsik: human rights activist held in psychiatric hospital, 2 October 2002, http://web.amnesty.org/library/print/ENGEUR460172002 (accessed in November 2003).
[267] Amnesty International, Russian Federation: Vasily Stetsik released from psychiatric hospital, 19 December 2002, http://web.amnesty.org/library/print/ENGEUR460712002 (accessed in November 2003).
[268] Amnesty International, Russian Federation: Bakhrom Khamroev, human rights defender, 19 August 2003, http://web.amnesty.org/library/print/ENGEUR460702003 (accessed in November 2003).
[269] Ibid.
[270] Amnesty International, Russian Federation: Bakhrom Khamroev, human rights defender, 23 October 2003, http://web.amnesty.org/library/print/ENGEUR460762003 (accessed in November 2003).

forces. Imakayev was subsequently detained himself by government forces. Malika Umazheva, also a Chechen, was killed in November 2002, reportedly by government forces for her outspokenness about abuses committed by Russian forces in her village in Chechnya. Activists from the Russia-Chechnya Friendship Society, a local human rights NGO, were reportedly attacked by soldiers and Ingush police and one of their members, Luiza Betergeryeva, was killed by Russian forces at a checkpoint in December 2001.[271]

175. The "Soldiers' Mothers of Saint Petersburg" reported on recent problems encountered with Russian authorities when, in early 2003, their activities were investigated to find out whether they corresponded to the ones set out in the officially registered statutes of the NGO. During the investigation, the official in charge of the enquiry insisted on looking through the private files of the soldiers defended by the organization, thereby violating the principle of privacy. In June 2003, the organization's activities were found to be incompatible with their statutes and a new version of their statutes was presented for registration one month later. Their registration was refused in August 2003. At the same time, the organization also faced some other difficulties, including judicial proceedings for having provided information on the psychological and physical torture allegedly practiced at the Nachimov military school.[272]

176. There have also been controversial cases of espionage charges against scientists and environmental activists. For example, in October 1999, Igor Sutyagin, a scholar and arms control researcher at the USA and Canada Institute, was arrested by FSB agents in Kaluga. He was subsequently charged with selling information on nuclear submarines and missile warning systems to a British company that the prosecutor claimed was a "cover" for the CIA. Whereas Mr. Sutyagin did not deny the transfer of information, he asserted that he had collected it from open sources and that it could, thus, not be classified as a state secret.[273] He was first put on trial in Kaluga in December 2000, but a regional court refused to convict him due to insufficient evidence. A year later the case was sent back to the FSB for further investigation and a new trial was eventually scheduled for November 2003. Mr. Sutyagin was eventually found guilty of treason and convicted to 15 years in prison in April 2004. He has remained in detention since his arrest and submitted an application to the European Court on Human Rights in Strasbourg for violation of Articles 5 and 6 of the ECHR (arbitrary arrest and fair trial).[274]

177. Another high-profile espionage case involved former Navy Captain Alexander Nikitin, arrested and charged with divulging state secrets after co-authoring a report on environmental dangers posed by Russia's northern submarine fleet. Mr. Nikitin asserted that the information he used had previously been published. He was acquitted after having spent 11 months in detention.[275]

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[271] All these incidents can be found in: U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 1.g.
[272] For all details, see: The Observatory for the Protection of Human Rights Defenders, Observatory Appeals, Russia: new attacks against human rights defenders, 17 September 2003.
[273] The Moscow Times, "Sutyagin Found Guilty of Treason", 6 April 2004.
[274] The Moscow Times, "City Court Gives Sutyagin 15 Years", 8 April 2004.
[275] Ibid.

178. Anatoly Babkin, a professor at Moscow's Bauman Technical University was found guilty of spying for the U.S. in February 2003. He was accused of providing classified information about the high-speed Shkval torpedo to a U.S. businessman and to former U.S. Navy intelligence officer Edmund Pope, who himself was convicted on espionage charges but later on pardoned and released following interventions by the U.S. government.[276] Another recent case concerns Valentin Danilov, a physicist based in Krasnoyarsk and accused of spying for China while working on a commercial contract. He was eventually acquitted in a jury trial in December 2003.

179. Memorial reported that its regional office in the Chechen capital Grozny was forcefully entered by Russian federal troops on 18 July 2002, during a planned city-center sweep operation. While no one was present in the office at that time, one employee arrived shortly afterwards. The intruders then left without identifying themselves.[277]

180. Other NGOs reporting recent harassment by Russian authorities include VTSIOM (the Russian Centre for Public Opinion and Market Research), the local branch of Memorial in St. Petersburg, the School of Peace Foundation based in Novorossiysk in Krasnodar Krai, as well as the Sakharov Museum in Moscow which is a part of a complex called Museum and Civil Centre "Peace, Progress and Human Rights".[278]

181. The mandate of the OSCE Assistance Group to Chechnya expired on 31 December 2002 and the Russian Government refused to renew it. The mission was mandated to, *inter alia*, promote respect for human rights and fundamental freedoms. It frequently criticized the actions of Russian military forces in the North Caucasus. Then Russian Foreign Minister Ivanov said that the OSCE mission had failed to understand Chechen realities, whereas other officials noted that Russia wished to continue co-operation with the organization but that corrections were required in its operations.[279]

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[276] The Moscow Times, "Sutyagin Verdict Worries Scientists", 7 April 2004.
[277] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 1.g.
[278] For all details, see: The Observatory for the Protection of Human Rights Defenders, Observatory Appeals, Russia: new attacks against human rights defenders, 17 September 2003.
[279] U.S. Department of State, Russia: Country Report on Human Rights Practices 2002, 31 March 2003, section 4

C. *Russian Refugees and Asylum-Seekers: Global trends*[280]

A. Refugee population

182. By the end of 2002, some 92,000 refugees from Russian Federation were hosted in some 50 asylum countries according to UNHCR estimates. Almost half of all Russian refugees are living in Germany.[281] In the USA, some 18,500 Russian citizens were either accepted as asylum-seekers or resettled as refugees since 1998 and can thus be assumed to be refugees who have not yet received US citizenship (see Figure 1).

Fig. 1. Refugees from Russian Federation

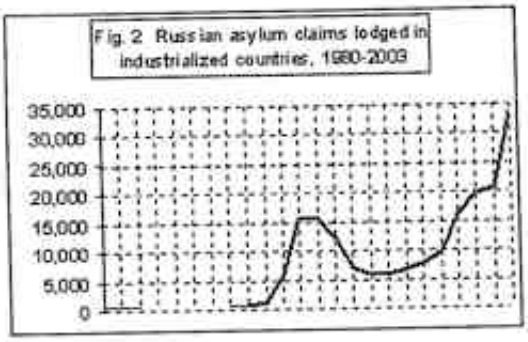
Main country of asylum	Total End 2002
Germany	44,280
USA*	18,500
Kazakhstan	13,700
Georgia	4,180
Canada*	1,990
France	1,790
Netherlands**	1,220
Sweden**	980
UK**	850

* Admitted during past 5 years
** Admitted during past 10 years

183. In 2003, the size of the Russian refugee population remained fairly constant in most countries, although a rather significant increase was reported by Austria (from 150 to 910),[282] Germany (+1,300), Norway (+750).[283]

B. Asylum applications

184. The number of Russian citizens claiming asylum in the industrialized countries has fluctuated strongly in the past 20 years. Following the collapse of the Soviet Union, a first peak in the outflow was reached in 1991/1992 when 15,000 claims were received. Since the late 1990s, the number of Russian asylum-seekers climbed strongly again. In 2003, some 33,700 new claims were recorded up from 9,800 in 1999 (*see Figure 2 and Table 1*). Consequently, the Russian Federation became the leading country of origin of asylum applicants in industrialized countries[284].



185. The distribution of the more than 186,000 new Russian asylum applications lodged since 1980 shows that Germany received a quarter of these claims (24%), followed by the USA (12%), Poland (7%) and the United Kingdom (7%) (*See Figure 3*).

186. The most recent monthly data indicates that the peak in Russian asylum-seekers occurred during the third quarter of 2003. During the fourth quarter of 2003. industrialized countries registered 12 per cent fewer claims than in the previous

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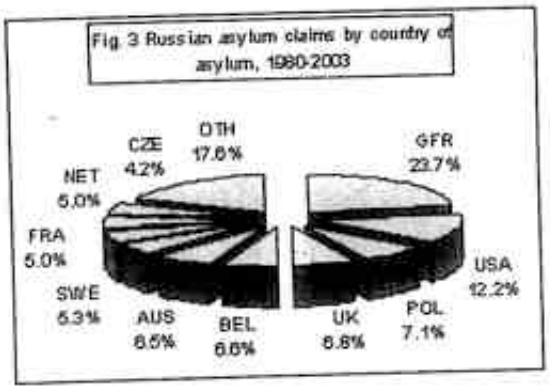
[280] Prepared by the Population Data Unit, PGDS/DOS, UNHCR Geneva.
[281] Source: Central Foreigners Register. It should be noted that it takes a relatively long period for refugees to naturalize in Germany as compared to other asylum countries.
[282] UNHCR estimate. In 2003, 790 Russian asylum-seekers were granted asylum (see Table 4).
[283] UNHCR estimate. In 2003, 720 Russian asylum-seekers were granted refugee or humanitarian status (see Table 4).
[284] See *Asylum Levels and Trends: Europe and non-European Industrialized Countries, 2003*, available at http://www.unhcr.ch, Statistics, Asylum Trends.

quarter. During January to March 2004, the level of Russian asylum claims was 24 per cent below the fourth quarter of 2003 (*see Table 2*).

C. Asylum and refugee status determination

187. In 2002, some 23,000 Russian asylum claims were adjudicated globally. Of these, about one-quarter (5,800) were closed (rejected) without having received a substantive decision. Of the 17,400 claims that were decided, 3,000 were grants of refugee status (17%), 850 were grants of humanitarian status (5%), whereas the remaining 13,500 claims (78%) were rejected. Recognition rates varied greatly, depending on the country of asylum, the type of asylum application and the level in the asylum procedure (*see Table 3*).



188. Table 4 provides the latest data on asylum and refugee status determination of Russian claims for the countries with available statistics at the time this report was prepared.

Table 1. New asylum applications lodged by Russian citizens in industrialized countries, 1990-2003
2003 data provisional, subject to change.
USA and UK: no. of cases

Country	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Australia	-	-	-	-	-	-	-	98	83	127	177	82	34	32
Austria	540	544	305	149	127	120	102	37	59	120	291	356	2,221	6,715
Belgium	81	160	146	310	215	243	274	213	277	1,376	3,604	2,424	1,156	1,680
Bulgaria	-	1	-	-	-	-	-	1	2	4	18	10	13	8
Canada	6	45	443	195	398	445	565	546	686	861	690	419	322	237
Cyprus	-	-	-	-	-	-	-	-	3	7	8	134	37	253
Czech Rep.	95	354	84	25	33	47	53	34	61	245	623	642	629	4,853
Denmark	172	288	668	550	133	98	85	63	60	74	245	123	198	269
Estonia	-	-	-	-	-	-	-	-	-	1	2	-	1	4
Finland	194	486	809	493	91	94	63	70	66	192	269	293	275	287
France	242	421	410	198	204	80	193	231	220	469	767	1,783	1,741	1,986
Germany	2,337	5,690	5,692	5,361	1,303	1,887	1,647	1,992	867	2,094	2,763	4,523	4,058	3,383
Greece	49	3	15	11	2	13	-	-	1	-	12	21	36	47
Hungary	-	-	-	-	-	-	-	7	19	27	52	40	43	105
Iceland	-	-	-	-	-	-	-	-	1	-	1	2	16	3
Ireland	-	-	-	-	13	11	53	110	83	175	327	307	206	102
Italy	30	-	45	52	13	37	-	11	13	50	210	131	59	-
Japan	-	-	-	-	-	-	-	-	-	-	3	1	-	4
Latvia	-	-	-	-	-	-	-	-	4	6	2	9	11	2
Liechtenstein	-	-	-	-	-	-	-	-	-	1	-	-	5	17
Lithuania	-	-	-	-	-	-	-	-	5	3	115	180	242	91
Luxembourg	-	-	-	-	-	12	4	9	9	28	25	66	68	60
Malta	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Netherlands	224	1,013	408	632	1,182	615	551	459	519	960	1,021	918	426	245
New Zealand	-	-	-	-	-	-	-	-	-	-	-	1	6	2
Norway	81	71	75	39	75	69	50	39	131	318	471	1,318	1,719	1,923
Poland	-	1,413	160	-	-	83	62	50	47	109	1,153	1,490	3,048	5,581
Portugal	1	6	5	28	-	6	7	8	3	3	19	5	13	6
Romania	-	-	-	-	-	-	-	-	-	1	1	1	3	5
Slovakia	-	-	-	-	-	-	-	23	-	-	14	84	618	2,663
Slovenia	-	-	-	-	-	-	-	2	-	3	34	5	23	15
Spain	-	-	-	64	99	91	73	82	154	335	394	350	172	138
Sweden	736	1,142	725	296	473	326	203	232	229	449	590	841	1,496	1,361
Switzerland	98	152	61	46	-	111	144	192	193	263	254	456	507	526
Turkey	-	-	-	-	-	-	-	-	1	-	-	-	-	-
UK	100	245	270	390	595	795	1,340	2,015	2,820	685	1,000	1,790	295	287
USA	1,043	3,632	5,257	3,234	2,163	775	512	564	1,073	770	856	844	837	815
Total	6,029	15,865	15,578	12,075	7,119	5,958	5,981	6,678	7,869	9,756	16,091	19,659	20,534	33,708

Table 2. New asylum applications lodged by Russian citizens in industrialized countries, 2003-2004

2003 data provisional, subject to change.

USA and UK: no. of cases

	2003												2004		
Country	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.
Austria	66	146	263	287	625	856	828	818	998	1,067	228	513	343	591	914
Belgium	66	71	98	101	85	126	229	198	256	164	120	142	105	105	127
Bulgaria	-	-	3	-	-	2	-	-	-	-	-	3	-	3	-
Czech Rep.	61	102	62	733	465	294	293	575	478	1,040	506	243	153	213	516
Denmark	35	17	9	16	10	43	14	29	43	26	11	16	31	18	24
Finland	37	15	29	10	20	32	33	19	9	55	19	14	20	7	21
France	231	237	257	271	191	310	416	312	270	306	283	-	220	329	284
Germany	400	208	186	198	234	316	328	231	474	318	279	225	259	254	209
Greece	8	8	6	1	-	3	1	-	6	11	5	5	6	6	30
Hungary	5	2	30	6	6	7	14	4	3	11	6	9	-	2	3
Ireland	12	21	6	5	4	4	8	12	9	5	11	5	2	7	5
Liechtenstein	-	-	2	-	-	8	-	3	1	1	2	-	-	-	1
Luxembourg	7	1	7	6	3	-	4	10	6	9	3	4	4	4	-
Netherlands	20	30	19	23	9	20	26	30	26	21	15	8	16	37	24
Norway	72	111	164	101	102	200	142	226	335	197	169	102	100	88	66
Poland	256	194	558	309	427	311	327	465	1,109	580	429	616	268	320	389
Portugal	-	-	-	-	-	1	-	-	5	-	-	-	1	-	1
Romania	-	-	1	-	-	1	-	2	-	-	1	-	-	-	1
Slovakia	41	86	155	115	112	135	165	237	395	502	348	372	239	226	152
Slovenia	4	-	-	-	2	3	-	-	-	1	1	4	-	-	-
Spain	12	13	10	12	8	9	18	12	18	7	12	9	12	3	7
Sweden	81	99	84	86	101	134	141	118	143	118	112	144	109	90	103
Switzerland	37	42	33	39	26	46	44	46	48	48	65	52	41	52	56
UK (cases)	33	12	27	22	21	24	23	23	19	27	29	27	..	..	..
Canada	27	21	13	21	24	14	11	24	26	19	19	18	11	12	19
USA (cases)	89	69	83	70	90	86	54	48	64	69	53	83	56	60	66
Australia	4	9	2	4	5	-	-	1	5	-	2	-	-	3	1
New Zealand	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-
Japan	-	-	-	-	-	-	2	-	-	-	-	2	-	-	2
Total	1,644	1,514	2,107	2,426	2,572	2,989	3,121	3,445	4,745	4,603	2,728	2,614	1,996	2,432	3,023
- excl UK	1,611	1,502	2,080	2,404	2,551	2,965	3,098	3,422	4,726	4,576	2,699	2,587	1,996	2,432	3,023

Department of International Protection
Protection Information Section

Table 3. Refugee status determination of Russian asylum claims, 2002

Decisions of 50 and more only

T= Type of procedure (Government, UNHCR)

A= Type of application (New application, Repeat application)

L= Level of procedure (First instance, Administrative review, Executive Office of Immigration Review, Immigration and naturalization Service, Values between 1 and 4 replaced with an asterisk.

Country of asylum	Procedure			Pending cases begin year	Applied since 1 Jan	Decisions during 2002					Pending cases end year	Recognition rate(%)	
												Excl. abn. d.	
	T	A	L			Recognized	Other (hum.)	Rejected	Otherwise closed	Total		Ref. status	Total
Germany	G	NA		2,233	4,058	382	56	3,334	388	4,160	2,204	10.1	11.6
Poland	G	NA	FI	-	3,048	206	-	1,888	384	2,478	-	9.8	9.8
UK	G		AR	-	-	345		1,360	105	1,815	-	20.2	20.2
France	G		FI	-	1,741	484	-	1,099	-	1,583	-	30.6	30.6
Norway	G	NA	FI	-	1,719	69	161	663	630	1,523	-	7.7	25.8
Austria	G	RA		-	2,221	36	-	91	953	1,080	-	28.3	28.3
USA	G		EO	1,376	1,016	309	-	200	427	936	1,456	60.7	60.7
Sweden	G	NA	FI	-	1,496	7	64	716	145	934	-	0.9	9.0
Netherlands	G		AR	979	-	*	96	743	80	922	173	0.4	11.8
USA	G		IN	931	837	294	-	411	114	819	1,051	41.7	41.7
Netherlands	G		FI	463	436	*	59	572	100	733	212	0.3	9.6
Czech Rep.	G	NA	FI	693	628	36	-	128	468	632	599	17.9	17.9
Finland	G	NA	FI	98	275	-	98	24	439	561	-	-	80.3
Switzerland	G	NA	FI	352	507	*	23	170	233	427	451	0.5	12.4
Canada	G			609	322	219	-	118	67	404	514	65.0	65.0
France	G		AR	-	720	130	-	264	-	394	-	33.0	33.0
Ireland	G	NA	FI	-	208	28	7	183	162	380	-	12.8	16.1
UK	G		FI	-	295	15	20	250	75	360	-	5.3	12.3
Sweden	G	NA	AR	-	-	6	60	250	24	340	-	1.9	20.9
Germany	G	RA		90	369	*	*	20	311	333	147	4.5	9.1
Slovakia	G	NA		67	618	*	-	56	270	328	357	3.4	3.4
Spain	G			-	172	23	19	111	101	254	-	15.0	27.5
Ireland	G	RA	AR	-	187	65	-	139	14	218	-	31.9	31.9
Belgium	G		FI	-	1,156	12	-	124	62	199	-	8.8	8.8
Denmark	G	NA	FI	56	198	9	67	61	-	137	19	6.9	55.5
Czech Rep.	G	NA	AR	52	120	-	-	84	40	124	48	-	-
Italy	G			-	59	9	8	105	-	122	*	7.4	13.9
France	G		RA	-	73	119	-	-	-	119	-	100.0	100.0
Lithuania	G	NA		39	242	*	74	7	36	118	183	1.2	91.5
Australia	G		FI	55	34	10	-	75	*	89	12	11.8	11.8
Australia	G		AR	124	41	17	-	56	5	78	87	23.3	23.3
Belgium	G		AR	-	134	10	-	56	7	73	-	15.2	15.2
Moldova	U			55	52	44	-	-	28	72	35	100.0	100.0
Greece	G	NA		20	36	*	*	43	7	58	-	7.8	15.7
Other				6,349	2,030	90	29	141	83	335	8,504	34.5	45.8
Total				14,641	25,056	2,980	846	13,544	5,760	23,128	16,236	17.2	22.0

Table 4. Refugee status determination of Russian asylum claims, 2003

Includes only countries for which data were available by end-April 2004

Decisions of 50 and more only

T = Type of procedure (Government, UNHCR)

A = Type of application (New application, Repeat application)

L = Level of procedure (First instance, Administrative review, Executive Office of Immigration Review, Immigration and naturalization Service,

Values between 1 and 4 replaced with an asterisk.

Country of asylum	Procedure			Pending cases begin year	Applied since 1 Jan.	Decisions taken during the year					Pending cases end year	Recognition rate(%)	
						Recognized	Other (hum.)	Rejected	Otherwise closed	Total		Excl. oth. cl.	
	T	A	L									Ref. status	Total
Poland	G	R	FI	-	5,591	185	20	1,706	4,520	6,431	1,030	9.7	10.7
Czech Rep.	G	N	FI	699	4,853	62	-	1,098	2,796	3,954	1,598	5.4	5.4
Germany	G	N	FI	2,204	3,383	354	129	2,521	353	3,357	2,296	11.8	16.1
Slovakia	G	N	FI	357	2,653	-	-	43	1,869	1,912	1,098	-	-
Norway	G	N	FI		1,923	139	580	550	379	1,648		11.0	56.7
Sweden	G		FI		1,361	19	64	1,104	281	1,468		1.6	7.0
USA	G	EO	AR	1,168	995	379	-	239	472	1,090	1,073	61.3	61.3
Austria	G				6,709	788		237		1,025	5,684	76.9	76.9
USA	G	IN	FI	1,008	761	224	-	447	230	901	899	33.4	33.4
Sweden	G		AR			13	43	504	34	594		2.3	10.0
Switzerland	G	N	FI	458	534	12	25	254	281	572	446	4.1	12.7
Germany	G	R	FI	147	495	9	6	15	464	494	144	30.0	50.0
Canada	G			514	225	178		123	73	374	360	59.1	59.1
Finland	G		FI		292		14	9	238	261		-	60.9
Lithuania	G	N	FI	163	91	*	23	8	193	226	28	6.1	75.8
Cyprus	U	R	AR	115	89	15	-	123	36	174	10	10.9	10.9
Kyrgyzstan	G	N	FI	516	96	-	-	-	138	138	474	-	-
Spain					190	*	*	9	124	136		14.3	35.7
Ireland	G	N	FI	113	102	7	-	89	35	131	84	7.3	7.3
Denmark	G		FI	19	269	10	43	61	-	114	41	8.8	46.5
Ireland	G	N	AR	76	89	24		73	*	101	64	24.7	24.7
Hungary	G	N	FI	18	105	9	43	18	30	100	23	12.9	74.3
Ukraine	G	N	FI	17	101	6		87	5	98	20	6.5	6.5
Belgium	G	R	AR	94	330	13		64	17	94	330	16.9	16.9
Denmark	G		AR	28	-	10	12	30	-	52	16	19.2	42.3

D. Map of the Russian Federation

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